

**Implementation of Operational Directive 4.20 on
Indigenous Peoples: An Independent Desk Review**

Background Paper I

A Review of Selected Issues Related to IP

OEDCR

OPERATIONS EVALUATION DEPARTMENT

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A REVIEW OF SELECTED ISSUES RELATED TO IP¹ (JULY 2001)

PART I: AN OVERVIEW OF THE INTERNATIONAL LAW ON INDIGENOUS RIGHTS

BACKGROUND

1. This review is a companion piece to OED's evaluation of the implementation of Operational Directive 4.20 on Indigenous Peoples (IP). The review specifically aims to identify IP in 34 sample countries and understand issues related to them under international laws and laws of client and selected industrialized countries.
2. The review is divided into three parts. Part I is an overview of the international law on indigenous rights. Part II surveys national regulatory frameworks that govern indigenous peoples/tribals in the 34 countries selected for the OED review. Part III examines the laws governing IP in selected industrialized countries (Canada, New Zealand, Norway, USA). An extensive bibliography is also included.

INTERNATIONAL LAW

3. Early doctrines of international law legitimized the occupation and settlement of lands belonging to IP by European settlers. Under the doctrine of *terra nullius*, Europeans who came to the Americas and Australia could assert sovereignty over these continents on the ground that there was no pre-existing sovereign (Shaw 1998). IP were not considered sufficiently advanced to possess a law and sovereign of their own. The inherent racism of this premise was recognized by the International Court of Justice in the *Western Sahara Case* as well as by the High Court of Australia in *Mabo v. Queensland*. Consequently, the doctrine of *terra nullius* now stands discredited.
4. The only international instruments in force that deal specifically with the rights of IP/tribals are ILO Conventions No. 107 and 169. These conventions cover "tribal peoples"² and "indigenous peoples"³ as distinct, but related, vulnerable groups in need of protection. Among the most controversial definitional issues has been the use of the term "peoples" to describe these populations. "Peoples" have a right to self-determination under international law. Many states are

¹ This review was prepared by Rahul Rao, Svenja Weber-Venghaus, and Brandie Sasser. The analysis of laws relating to Industrialized countries was prepared by Gernot Brodnig.

² People whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations

³ People who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

wary of referring to their indigenous inhabitants as “peoples” for fear of acknowledging a possible right to secession. Recent international instruments such as the 1992 Rio Declaration on Environment and Development, Agenda 21, the 1992 Forest Principles and the Convention on Biological Diversity all refer to indigenous *people*. ILO Convention No. 169, while using the term “peoples,” clarifies that this does not trigger the application of rights which normally attach to the term under international law.

5. A comparison of the two ILO conventions demonstrates the shift in international thinking on indigenous rights over the last few decades. The 1957 Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (hereafter ILO 107) is premised on the notion that IP/tribals are hindered “from benefiting fully from the rights and advantages enjoyed by other elements of the population” because they “are not yet integrated into the national community” (preamble). The convention therefore aims at their progressive integration into “national” society, unmindful of the consequent loss of their distinct identity.⁴ Although ILO 107 makes passing references to the need to ensure that integration proceeds on the basis of consent⁵, these caveats seem incongruous with the overall tone of the convention, which resolves that integration is the ultimate goal.

6. In contrast, the 1989 Convention concerning Indigenous and Tribal Peoples in Independent Countries (hereafter ILO 169), acknowledges the need “to adopt new international standards on the subject with a view to removing the assimilationist orientation of the earlier standards” and recognizes “the aspirations of (indigenous) peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live” (preamble). The convention emphasizes repeatedly, the need for IP to be involved in decision-making processes so that they may chart the course of their development.⁶ It requires consultation and other activities to take place through the traditional institutions of IP.⁷ Most significantly, it requires the transfer of responsibility in areas such as health and education to indigenous communities to the extent that they desire, and are capable of exercising, such responsibility.⁸

7. The United Nations Working Group on Indigenous Populations (UNWGIP) is currently the only international forum dedicated to IP issues. Established in 1982, this group of 5 independent experts reviews developments pertaining to IP in different countries and evolves international standards on indigenous rights. Although it has no authority to hear specific complaints, the Group’s highly participatory working procedures have enabled the articulation of specific grassroots concerns. Its standard setting activity has culminated in the Draft Declaration on the Rights of Indigenous Peoples, which is currently under consideration by the UN Commission on Human Rights. The success of the Group in giving IP issues visibility led to a call for the establishment of a Permanent Forum on indigenous issues at the World Conference on Human Rights (1995).

⁴ ILO 107: art. 2(1); art. 7(2): indigenous customs and institutions can be retained only if they are not incompatible with the national legal system or the objectives of integration programs; art. 17(3): affirmative action such as special training facilities to be withdrawn as the process of integration advances; art. 23(2): progressive transition during the schooling process from the mother tongue or the vernacular language to the national language or to one of the official languages of the country; art. 24: the imparting of general knowledge and skills that will help children to become integrated into the national community shall be an aim of primary education.

⁵ ILO 107: arts. 2(2)(c), 2(4) and 4(b).

⁶ ILO 169: arts. 6(1)(b), 7(1), 15(1) and 17(2).

⁷ ILO 169: arts. 6(1)(a), 8(2) and 12.

⁸ ILO 169: arts. 22(3), 25(1), 27(2) and (3).

8. In addition to the above IP-specific instruments, IP may avail of all the rights and mechanisms available under general international human rights law, particularly those under the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, the International Convention on the Elimination of all forms of Racial Discrimination, the Convention on the Rights of the Child, etc. In particular art. 27 of the ICCPR, which guarantees the right to cultural integrity, has frequently been resorted to by IP. Caselaw⁹ under this provision demonstrates a very wide interpretation of “cultural integrity” where IP are concerned, encompassing rights over land and natural resources. Such wide interpretations of art. 27 have not been accorded to other vulnerable populations such as ethnic minorities (Anaya 2000).

PART II: NATIONAL REGULATORY FRAMEWORKS

9. The review examined regulatory frameworks that govern IP/tribals in the 34 selected countries. These were juxtaposed with OD 4.20 so as to facilitate comparison. Particular attention was paid to provisions concerning: (i) land and resource rights (ii) political and socio-economic inclusion (self-government, economic development and social services such as education and health) and (iii) cultural integrity (religion, language and intellectual property) (*See table 2*).

10. The review discerned the following trends:

- (i) Countries with IP/tribals and regulatory frameworks to deal with them: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Peru, Venezuela, Guatemala, Honduras (very meager framework), Mexico, Nicaragua, Panama, Philippines, Malaysia, Russia, India, Pakistan, Nepal (primarily administrative measures), Thailand, Cambodia (the last two have plans specific to their hill-tribes).
- (ii) Countries with regulatory frameworks covering larger groups such as ethnic minorities, which may subsume “true” IP/tribals: China, Vietnam.
- (iii) Countries with IP/tribals/ethnic minorities, but no regulatory framework: El Salvador (although ILO 107 ratified), Indonesia, Kazakhstan, Turkey, Tunisia (although ILO 107 ratified), Morocco, Rwanda Cote d'Ivoire, Ghana (although ratified ILO 107).
- (iv) Countries with few or no IP/tribals and therefore no regulatory framework: Uruguay.
- (v) Anomalous countries: In Ethiopia virtually everybody has a tribal affiliation (though not everyone continues to practice a traditional lifestyle). The regulatory framework therefore covers everyone – all “nations, nationalities and peoples” of Ethiopia.

⁹ *Ominayak, Chief of the Lubicon Lake Band v. Canada, Yanomami case and Case Concerning the Miskitu Indians of Nicaragua.*

11. The following table also provides the IP identified in the sample countries through this review.

Table 1: Percentage of Indigenous Peoples/Tribal Groups in Sample Countries	
IP % of Total Populations	Sample Countries (Actual number + % of total population)
0-5%	Argentina (500,000 or 0.1%), Cambodia (100,000 or 1%), Brazil (300,000 or 2%), Colombia (600,000 or 2%), Cote d'Ivoire (4,000 or 0.3%), Ghana (10,000 or 0.05%), Nicaragua (80,000 or 3%), Venezuela (150,000 or 1%), Uruguay (4,000 or .016%), Pakistan (2.2m or 0.16%), Russia (258,800 or .2%), Rwanda (10,000-27,000 or 0.2-0.4%), Thailand (800,000 or 1.3%), Indonesia (1.5m or 0.72%), Tunisia (285,000 or 3%)
6% to 30%	Panama (14,000 or 6%), India (67.5m or 7%), Honduras (700,000 or 15%), Chile (1m or 8%), Malaysia (2.1m or 9.25%), Mexico (12m or 14%), Philippines (4.2m or 10%), El Salvador (400,000 or 7%), Morocco (8.5m or 30%),
Exceeds 31%	Bolivia (4.9m or 71%), Ecuador (4.1m or 43%), Guatemala (5.3m or 66%), Peru (9.3m or 47%)
% of Ethnic Minorities (may include IP)	China (91 million or 8.2%), Vietnam (11.63m or 15%), Kazakhstan (6.97m or 46.6%), Turkey (13.12m or 20.4%), Nepal (8.33m or 35.6%)
Tribals identified but no count available as of yet	Ethiopia

Table 2: Comparative Table of Client Country Policies on Indigenous Peoples

DIMENSIONSⁱ	OD 4.20ⁱⁱ	China	Philippines	Vietnam	Malaysia
I. Identification	Close attachment to ancestral territories and natural resources; Self-identification and identification by others as members of distinct group; Indigenous language; Presence of customary social and political institutions; Primarily subsistence-oriented production. (para. 5)	55 officially recognized “national minority” (ethnic minority) groups. Constitute 8.2% of total population. Two-thirds of ethnic minority population live in officially designated autonomous areas (5 regions, 30 prefectures and 124 counties); one-third in non-autonomous areas.	Self-ascription and ascription by others; Communally bounded and defined territory; Occupation, possession, utilization of territory since time immemorial; ⁱⁱⁱ Distinct language, culture; Historically differentiated from majority Filipinos through resistance.	53 officially recognized ethnic minority groups. Constitute 15% of total population. Most live in uplands.	19 tribes in Peninsular Malaysia divided into 3 groups (Negrito, Senoi, Proto-Malay); 39 in Sabah; Constitution (art. 161A(7)) identifies 20 races (including dominant Malays) as indigenous to Sarawak.
II. Regulatory framework	OD 4.20	1982 Constitution, Law on Regional Autonomy (LRNA), Circular on Further Implementing the LRNA.	1987 Constitution, Indigenous Peoples Rights Act (IPRA) 1997.	1992 Constitution.	Constitution, Aboriginal Peoples Act (APA) 1954 (amended 1967, 1974).
1) Whom does regulatory framework address?	IP, ethnic minorities, tribal groups, scheduled tribes.	Ethnic minorities.	Indigenous cultural communities / IP.	Ethnic minorities.	Indigenous peoples / natives / aborigines (Orang Asli).
2) Presence of IP		Official classification may subsume “true” IP/tribals. ^{iv}	Yes.	Official classification may subsume “true” IP/tribals. ^v	Yes.
III. Land/Resource Rights	Particular attention should be given to IP rights to use lands they occupy. (para. 15a)	Few minority-specific provisions on land use and resource rights.	Rights over land recognized by IPRA.	All land owned by state.	Constitution permits reservation of land for aborigines. (art. 8(5)(c))
1) Land	Recognition of customary/traditional	All urban land owned by state. Rural / suburban	Native title over ancestral domains/lands	Households and other entities can receive	Orang Asli Areas and Reserves; ^{vii} IP do not

DIMENSIONSⁱ	OD 4.20ⁱⁱ	China	Philippines	Vietnam	Malaysia
	land tenure OR long-term renewable rights of custodianship and use. (para. 15c)	land owned by state or collectives.	recognized; ^{vi} embodied in Certificate of Ancestral Domain Title. (s. 11, IPRA)	medium to long-term rights to use land; longer land use rights (30-50 years) for forest, “unused”, “barren” land (1993 Land Law).	have title but are ‘tenants-at-will’. ^{viii} Native Customary rights to land recognized in Sabah, Sarawak. ^{ix}
2) Renewable Resources	Access to natural resources (forests, wildlife, water) vital for subsistence and reproduction. (para. 15a)	Waters, forests, ^x grasslands ^{xi} , other natural resources owned by state or collectives. Organs of self-government of autonomous areas charged with management of natural resources, but do not own them. ^{xii}	Rights over ancestral domains encompass inland waters, coastal areas, forests, pasture, traditional hunting and fishing grounds and all natural resources therein. (ss. 3(a), 7, IPRA)	“Forest land” allocated based on household’s perceived ability and stated willingness to “develop” it. Wealthier households likely to get better and more land.	Resource rights recognized by APA; however, licenses to collect forest produce can be issued to non-aborigines or non-resident aborigines after consultation with Commissioner.
3) Non-renewable Resources	[no specific provision]	All mineral resources owned by state. Special provision for mining in autonomous areas. ^{xiii}	Rights over ancestral domains encompass mineral resources. (s. 3(a), IPRA)	All mineral resources owned by state. (art. 17)	Compensation (if at all) only for what is above land (s. 11, APA); no rights to subsurface resources.
IV. Political and Socio-Economic Inclusion	Informed participation (para. 8); receive culturally compatible social and economic benefits. (para. 6)	Organs of self-government in autonomous areas intended to ensure locally relevant governance.	Autonomy and self-governance (Ch. IV, s. 13); Free prior informed consent in all matters concerning IP. (s. 3(g), IPRA)	Ministry for Ethnic Minorities, Committee for Ethnic Minorities & Mountainous Areas, ^{xiv} Nationalities Council. ^{xv}	Department of Orang Asli Affairs (JHEOA). Official integrationist policy.
1) Self-Government	Participation through representative organizations and traditional leaders. (para.	Autonomous regions, prefectures and counties governed at each level by organs of self-	Autonomous regions ^{xviii} of Muslim Mindanao and the Cordilleras with Regional Government, ^{xix}	No specific provision, but current Communist Party policy is that ethnic minorities should	Little self-government. JHEOA controls appointment of headmen, entry of non-Orang Asli

DIMENSIONS ⁱ	OD 4.20 ⁱⁱ	China	Philippines	Vietnam	Malaysia
	15d); Encourage early handover of project management to IP. (para. 14f)	government ^{xxvi} (People’s Congress and People’s Government ^{xxvii}).	Regional Assembly and special courts. ^{xx} National Commission on IP. ^{xxi}	be well represented in National Assembly and People’s Committees at every level.	into settlements, economic policy, etc. 1 seat in Senate reserved for Orang Asli.
2) Economic Development	Incorporation of IP into development process. (para. 9)	Organs of self-government have autonomous powers in financial administration, ^{xxii} economic administration ^{xxiii} and foreign trade. ^{xxiv}	IP have right to participate in formulation, implementation, evaluation of development plans; mandatory representation in local development councils.	State obliged to “raise the material and spiritual living conditions of the national minorities”. (art. 5) Official policy against swidden agriculture. ^{xxv}	Official policy of regroupment and sedentarization with consequent depletion of resource base. Cash-crop agriculture promoted.
3) Social Services	Special project components on health/nutrition and education. (para. 15) Possible contribution of traditional health providers. (para. 15e)	Organs of self-government have autonomous power over education, ^{xxvi} health. ^{xxvii} Can take affirmative action in employment, education and family planning.	Rights to basic services – employment, vocational training, housing, sanitation, health and social security. Integrated system of education relevant to needs of IP children. (Ch. V, IPRA)	Constitutional guarantee of priority investment in education ^{xxviii} (art. 36) and healthcare (art. 39) for ethnic minorities; traditional medicine promoted. (art. 39)	Preferential treatment for IP of Sarawak, Sabah in employment, education (art. 153); reservation of positions in public service for aborigines (art. 8(5)(c)); right to attend any school. ^{xxix}
V. Cultural Integrity	Development process should foster full respect for cultural uniqueness of IP. (para. 6)	Minorities have freedom to develop languages, preserve folkways, customs, religions.	Constitutional guarantee of right to preserve and develop culture, institutions.	Right to promote “fine” culture (art. 5); obligation to eliminate harmful customs (art. 30).	Constitutional provisions protecting religion, language.
1) Religion	Religious beliefs should be taken into account in the Indigenous Peoples Development plan’s design.	Freedom to engage in “normal” religious activity, subject to state supervision. ^{xxx} Special provision for minority Communist Party	Right to practice religion, Rights over ancestral domains encompass burial grounds, worship areas and other sacred places.	Right to freedom of religion. (art. 70)	Right to freedom of religion (art. 11); however, official policy of Islamization of Orang Asli.

DIMENSIONSⁱ	OD 4.20ⁱⁱ	China	Philippines	Vietnam	Malaysia
	(para. 14d)	members. ^{xxx1}			
2) Language	Special project component on linguistic preservation. (para. 15)	Constitutional guarantee of freedom to use minority languages for official business and in courts.	No specific provision, but linguistic preservation would be guaranteed by broader cultural rights provisions.	Right to use own language and system of writing (art. 5); specifically in court proceedings (art. 133).	Right to use, teach, learn any language (art. 152). Special provision for native languages in Sabah, Sarawak. ^{xxxii}
3) Indigenous Knowledge	Draw upon indigenous knowledge. (paras. 8 and 14e)	Organs of self-government have autonomy over media ^{xxxiii} and science and technology.	Guidelines and Procedures for the Prospecting of Biological and Genetic Resources. ^{xxxiv}	[no specific provision]	[no specific provision]

DIMENSIONS	OD 4.20	Thailand ^{xxxv}	Cambodia	Indonesia	Argentina
I. Identification	Close attachment to ancestral territories and natural resources; Self-identification and identification by others as members of distinct group; Indigenous Language; Presence of Customary social and political Institutions; Primarily subsistence-oriented production. (para. 5)	10-13 officially recognized “hill tribes.” Constitute 1.3% of total population. Concentrated in northern mountainous areas and along western border with Myanmar.	Khmer Loeu (upland Khmer) / hill tribes / highland peoples. Estimated 12 groups. Constitute 1% of total population. Census of 1998 did not report information on minority populations.	Officially recognized “isolated tribes” or <i>suku terasing</i> . Estimated at 1.5 million.	Ministry of Tourism identifies only 5 “pure indigenous groups,” comprising 0.5% of total population. Other estimates suggest 350,000 IP, constituting 1% of total population, divided amongst 14-24 groups.
II. Regulatory Framework	OD 4.20	Master Plan for Developing Highland Communities, the Environment and for Narcotic Crops.	Draft National Policy on Highland Peoples’ Development.	No regulatory framework, but Local Govt. Act (LGA) and Revenues Allocation Act (RAA) 1999 could have major impact.	Law 23,302 of 1985 (Indigenous Policy & Support of Aboriginal Communities); 1994 Constitution; ILO 169 adopted by Law 24,071.
1). Whom does regulatory framework address?	IP, ethnic minorities, tribal groups, scheduled tribes.	Hill tribes.	Highland peoples.	No regulatory framework, but isolated tribes / <i>suku terasing</i> are officially recognized.	Indigenous peoples.
2) Presence of IP?		Tribal groups.	Tribal groups.	Tribal groups.	Yes.
III. Land/Resource Rights	Particular attention should be given to IP rights to use and develop lands they occupy. (para. 15a)	No tribal-specific provisions, but constitutional right to sue if EIAs not conducted (s. 56); right to information and participation in public hearings (s. 59).	1992 land law: ownership of residential property only; rights of occupancy & use for cultivation (5 hectares), concession lands (over 5 ha) for growing crops to support nat’l economy.	Basic Agrarian Law, Basic Forestry Law do not empower tribals/local people or include them in natural resource management.	Constitutional recognition of juridical personality of communities, ^{xxxvi} community ownership of traditionally occupied lands; land inalienable, not susceptible to lien or attachment. (s. 75(17))
1) Land	Recognition of customary/traditional	No tribal-specific provisions. Only a minority of	Draft land law envisages new category of	Customary law (adat) and land tenure	Land rights recognized, but titling hampered by

DIMENSIONS	OD 4.20	Thailand ^{xxxv}	Cambodia	Indonesia	Argentina
	land tenure OR long-term renewable rights of custodianship and use. (para. 15c)	tribals are citizens and can hold land titles. Frequent relocation from newly protected forest lands into lowlands.	indigenous community property. ^{xxxvii}	applicable only to the extent they do not conflict with national law.	procedural, administrative, political barriers. IP who have relocated to urban areas cannot claim land rights.
2) Renewable Resources	Access to natural resources (forests, wildlife, water) vital for subsistence and reproduction. (para. 15a)	No tribal-specific provisions, but constitutional right to participate in management, maintenance, preservation, exploitation of natural resources (s. 46) (but <i>see above</i>).	Logging, hydroelectric projects, plantations, natl parks threaten resource base. 90% of total harvest of forest produce is illegal, often with official/ military involvement or acquiescence. ^{xxxviii}	Forestry Act 1999 does not recognize customary law of tribals; explicitly includes customary land within state forests; participation of tribals limited to guarding forests, reforestation. ^{xxxix}	Constitutional guarantee of participation in issues related to natural resources (s.75(17)); right to a healthy, balanced environment (s. 41).
3) Non-renewable Resources	[no specific provision]	[no specific provision]	All mineral resources owned by the state.	All subsurface resources owned by the state. ^{xl}	[no specific provision]
IV. Political and Socio-Economic Inclusion	Informed participation (para 8); receive culturally compatible social and economic benefits. (para. 6)	Ensured by several government agencies, ^{xli} esp. Hill Tribes Welfare Division. Integrationist policy.	Inter-Ministerial Committee on Highland Peoples' Development.	Originally, integrationist policy (e.g. transmigration); new regional autonomy package.	National Institute of Indigenous Affairs (INAI). Responsible, <i>inter alia</i> , for land titling.
1) Self-Government	Participation through representative organizations and traditional leaders. (para. 15d) Encourage early handover of project management to IP. (para. 14f)	No seats in Parliament, no representation at higher government levels, very little representation at mid levels. Village headmen selected by government. ^{xlii} 50-67% do not have Thai citizenship. ^{xliii}	[no specific provision]	LGA: ^{xliv} autonomous areas have local assembly and govt; authority over most subjects; ^{xlv} local terms can be used for villages, village councils; customary law applicable only if it does not conflict with state law.	Indigenous Parliaments (1972, 1973); Indigenous Federations of Chaco, Tucuman, Neuquina, Thaka Honat (Wichi) – organizations for representation, rather than self-government.
2) Economic Development	Incorporation of IP into development process. (para. 9)	Virtually no participation of tribals in development. Traditional occupations	Highland peoples were consulted in preparation of Draft National Policy on Highland Peoples'	Greater local autonomy over development & finances; however, villages likely to stop	[no specific provision]

DIMENSIONS	OD 4.20	Thailand ^{xxxv}	Cambodia	Indonesia	Argentina
		(shifting cultivation, opium growing) suppressed; cash-crop agriculture promoted.	Development.	receiving central grants; greater autonomy could mean reduced financial capacity.	
3) Social Services	Special project components on health/nutrition and education. (para. 15) Possible contribution of traditional health providers. (para. 15e)	No tribal-specific provisions, but constitutional rights to free education till age 12 (s. 43) and free healthcare for indigent persons (s. 52). Tribals have little access to these services.	No tribal-specific provisions, but constitutional right to free primary & secondary education (art. 68); free healthcare for poor citizens (art. 72); social services for women in rural areas (art. 46).	[no specific provision]	Constitutional right to bilingual and intercultural education. (s. 75(17))
V. Cultural Integrity	Development process should foster full respect for cultural uniqueness of IP (para. 6).	Constitutional right of “traditional community” to conserve / restore customs, “arts or good culture” (s. 46).	[no specific provision]	Local regulations must respect rights, origins, culture of villages, but subject to central laws. (LGA, cl. 111, 112).	Constitutional recognition of “ethnic and cultural pre-existence of IP”, respect for identity. (s. 75(17))
1) Religion	Religious beliefs should be taken into account in the Indigenous Peoples Development plan’s design (para. 14d).	Constitutional guarantee of freedom of religion. (s. 38).	Constitutional guarantee of freedom of religion. (art. 43).	Constitutional guarantee of freedom of religion. (art. 29).	Constitutional right to freely profess religion. (s. 14)
2) Language	Special project component on linguistic preservation. (para. 15).	[no specific provision]	No specific provision for minority languages; state obligated to promote Khmer.	Besides national language, “well-preserved” languages (e.g., Javanese, Sundanese, Madurese) will be respected and preserved.	[no specific provision]

DIMENSIONS	OD 4.20	Thailand^{xxxv}	Cambodia	Indonesia	Argentina
3) Indigenous Knowledge	Draw upon indigenous knowledge (paras. 8 and 14e).	Constitutional right to conserve / restore local knowledge (s. 46).	[no specific provision]	[no specific provision]	[no specific provision]

DIMENSIONS	OD 4.20	Brazil	Chile	Colombia	Venezuela
I. Identification	Close attachment to ancestral territories and natural resources; Self-identification and identification by others as members of distinct group; Indigenous Language; Presence of Customary social and political Institutions; Primarily subsistence-oriented production. (para. 5)	Federal government estimates 330,000 IP, constituting 0.2% of total population, but counts only residents of officially recognized indigenous areas as IP. Other estimates: ^{xlvi} 510,000 people divided amongst 225 communities speaking 180 different languages.	Law recognizes Mapuche, Aymara, Rapa Nui, Quechua, Colla, Alacalufe and Yagán. 1992 census: Mapuche (9.6% of total population), Aymara (0.5%), Rapa Nui (0.25%).	According to official figures, 600,000 IP, constituting 2% of total population. Divided amongst 81 groups speaking 75 languages.	400,000 IP, constituting 2% of total population. Divided amongst 27 groups.
II. Regulatory Framework	OD 4.20	1988 Constitution, 1973 Statute of the Indian; ILO 107 ratified.	Indigenous Act (IA) (Law 19,253 of 1993).	1991 Constitution, Law 21 of 1991 (applies ILO 169).	1999 Constitution; ILO 169 ratified. Much legislative activity in 2001.
1) Whom does regulatory framework address?	IP, ethnic minorities, tribal groups, scheduled tribes.	Indigenous peoples / Indians.	Indigenous Peoples.	Indigenous Peoples / Indians.	Indigenous Peoples / Indians.
2) Presence of IP		Yes.	Yes.	Yes.	Yes.
III. Land/Resource Rights	Particular attention should be given to IP rights to use and develop lands they occupy. (para. 15a)	IP have permanent possession and exclusive use of lands traditionally occupied by them ^{xlvii} (art. 231(2)); ownership vests in state (art. 20). Indian land is inalienable.	Indigenous Lands & Water fund established; funded by state, private entities, etc.; used for acquiring new land / water rights or transferring those that belong to the state or non-IP to IP. ^{xlviii}	Formal recognition and registration of indigenous lands (resguardos and reserves); by 1996, 408 resguardos covering 25% of national territory and 80% of IP population. ^{xlix}	Constitutional recognition of IP habitats ¹ and rights over lands traditionally occupied by them and which are necessary to develop and guarantee their way of life. (art. 119)
1) Land	Recognition of customary/traditional	Despite recognition of rights, only 32% of land	Land fund has enabled transfer of ownership	Reservation lands inalienable, cannot be	Collective property rights; inalienable (art.

DIMENSIONS	OD 4.20	Brazil	Chile	Colombia	Venezuela
	land tenure OR long-term renewable rights of custodianship and use. (para. 15c)	is demarcated. ^{li} Demarcated lands vulnerable to attack under decree 1775/96. ^{lii} IP can be evicted by Congress. ^{liii}	titles to IP communities and individuals. IP land inalienable to non-IP (art. 13, IA).	attached (art. 63). IP in areas containing cultural relics have special rights over them (art. 72).	119). But, lands frequently encroached by gold mining, cattle ranching, power projects, oil drilling.
2) Renewable Resources	Access to natural resources (forests, wildlife, water) vital for subsistence and reproduction. (para. 15a)	IP entitled to exclusive use of soil, rivers and lakes on lands traditionally occupied by them. (art. 231(2))	Some water rights purchased / regularized for IP; but little IP control over resources; forestry, aquaculture concessions frequently granted by govt. to non-IP.	Right to usufruct of renewable resources found in IP territories; authority to supervise conservation of natural resources (art. 330(5)). ^{liv}	Utilization of natural resources by state is subject to prior information and consultation with IP; should not damage social, economic, cultural integrity. (art. 120)
3) Non-renewable Resources	[no specific provision]	Exploitation of minerals or hydraulic resources on Indian lands must be approved by Congress (arts. 49, 176); IP have right to hearing, right to share in benefits (art. 231(3)).	Mining concessions frequently granted by govt. in IP areas (7.7% of all mining concessions granted are in Mapuche lands).	Mineral resources generally owned by state, but resguardos are considered indigenous mining reserves. ^{lv} (Decree 710 of 1990, art. 1)	As of Feb. 2001, a 1997 decree permitting mining in Imataca forest reserve was still in force (constitutional challenge pending).
IV. Political and Socio-Economic Inclusion	Informed participation (para 8); receive culturally compatible social and economic benefits. (para. 6)	Ensured by National Indian Foundation (FUNAI). Attorney General must defend rights of IP in court. (art. 129(V))	Ensured by National Corporation for Indigenous Development (CONADI); IP have right to participate in formulation of policies that affect them (art. 34, IA).	Several govt. agencies ensure political & socio-economic inclusion. ^{lvi} IP represented on Committee on Indigenous Policy, in the National Congress ^{lvii} and in local govt. institutions. ^{lviii}	Special representation in federal and local deliberating bodies, to be determined by law. 3 seats reserved for IP in National Congress (art. 186).
1) Self-Government	Participation through representative organizations and traditional leaders. (para.	Indians, their communities, organizations have standing to sue to defend	CONADI National Council composed of 8 govt. and 8 IP representatives elected	Indigenous territories established, given autonomy (arts. 287, 330). ^{lx}	Customary law recognized. (art. 260)

DIMENSIONS	OD 4.20	Brazil	Chile	Colombia	Venezuela
	15d) Encourage early handover of project management to IP. (para. 14f)	their rights. (art. 232)	by IP; has strong IP representation at all levels. IP law and dispute resolution ^{lix} methods applied where parties are IP (arts. 54, 55, IA).	IP authorities may exercise jurisdiction and apply IP law within their territories, provided there is no conflict with national law (art. 246). ^{lxi}	
2) Economic Development	Incorporation of IP into development process. (para. 9)	[no specific provision]	Indigenous Development fund aimed at promoting culturally-compatible development.	Indigenous territories have autonomy over economic and social development policies. (art. 330(2))	Right to retain own economic practices, to participate in national economy, to define economic priorities. (art. 123)
3) Social Services	Special project components on health/nutrition and education. (para. 15) Possible contribution of traditional health providers. (para. 15e)	FUNAI maintains educational and healthcare facilities in indigenous areas. Right of equal access to education and right to bilingual education (Statute of the Indian, arts. 48, 49).	CONADI obliged to establish bilingual, cross-cultural educational system in IP areas (art. 32, IA). 1990-93: program to bring water to IP houses.	Public Health Ministry Res. 10.013 (1981): right to culturally compatible healthcare. Decree 1141/78: right to culturally compatible education. ^{lxii}	Constitutional right to culturally compatible education (art. 121), healthcare (art. 122); state shall recognize traditional medicine; right to services for professional development (art. 123).
V. Cultural Integrity	Development process should foster full respect for cultural uniqueness of IP. (para. 6)	Constitutional guarantee of full exercise of cultural rights, esp. for Indians & Afro-Brazilians. (art. 215)	Obligation of society and state to “respect, protect and promote” indigenous culture. (art. 1, IA)	State recognizes and protects ethnic and cultural diversity (art. 7); state obliged to protect cultural assets (art. 8).	Constitutional recognition of IP cultures, views, traditions, languages and religions. (art. 119)
1) Religion	Religious beliefs should be taken into account in the IPDP design. (para. 14d)	Constitutional guarantee of freedom of religion. (art. 5(VI))	Constitutional guarantee of freedom of religion. (art. 19(6))	Constitutional guarantee of freedom of religion. (art. 19)	Right to retain values, spirituality, sacred places for ritualistic purposes. (art. 121)
2) Language	Special project component on linguistic	Recognition of Indian languages (art. 231);	Bilingual education for IP; right to use native	IP languages are also official languages within	IP languages are official languages for Indians

DIMENSIONS	OD 4.20	Brazil	Chile	Colombia	Venezuela
	preservation. (para. 15)	right to use native language in education (art. 210(2)).	language, request translator in judicial proceedings (art. 54, IA).	their territories; right to bilingual education (art. 10). ^{lxiii}	(art. 9); right to bilingual education (art. 121).
3) Indigenous Knowledge	Draw upon indigenous knowledge. (paras. 8 and 14e)	[no specific provision]	[no specific provision]	[no specific provision]	IP knowledge and innovation protected; patenting of IP resources and knowledge forbidden (art. 124).

DIMENSIONS	OD 4.20	Peru	Ecuador	Bolivia	Uruguay
I. Identification	Close attachment to ancestral territories and natural resources; Self-identification and identification by others as members of distinct group; Indigenous Language; Presence of Customary social and political Institutions; Primarily subsistence-oriented production. (para. 5)	9.3 million IP, constituting 47% of total population. Divided amongst 65 groups.	4.1 million IP, constituting 43% of total population. Divided amongst 13 groups.	4.9 million IP, constituting 71% of total population.	IP communities exterminated by mid-20 th century. Survivors estimated to number 4,000, constituting 0.016% of total population.
II. Regulatory Framework	OD 4.20	1993 Constitution; ILO 169 ratified.	1998 Constitution; ILO 169 ratified.	1994 Constitution; ILO 169 ratified.	No regulatory framework.
1) Whom does regulatory framework address?	IP, ethnic minorities, tribal groups, scheduled tribes.	Peasant and native communities.	Indigenous Peoples and Afro-Ecuadorians.	Indigenous Peoples (includes Afro-Bolivians).	
2) Presence of IP		Yes.	Yes.	Yes.	Very few.
III. Land/Resource Rights	Particular attention should be given to IP rights to use and develop lands they occupy. (para. 15a)	Native communities have juridical personality and own land, ^{lxiv} according to 1978 law ^{lxv} communal land is inalienable; but, inalienability is eroded by Constitution. ^{lxvi}	Collective property rights in IP lands are inalienable and indivisible (art. 84). (<i>but see 1994 law below</i>)	IP communities have juridical personality. ^{lxvii} Right to collective property, which is inalienable (art. 171).	
1) Land	Recognition of customary/traditional	Property rights of native communities to land they	IP communal ownership of land recognized under	300 IP communities given title deeds to more	

DIMENSIONS	OD 4.20	Peru	Ecuador	Bolivia	Uruguay
	land tenure OR long-term renewable rights of custodianship and use. (para. 15c)	possess within naturally protected areas recognized; ^{lxviii} ‘abandoned’ lands seized by state. ^{lxix}	Law of “Comunas”; 1994 Agrarian Development Law permitted alienation, division of land ^{lxx} and state seizure of land left fallow for more than 2 years.	than 10 million hectares in 6 of the country’s 9 departments. Campesinos and Indians are exempt from property taxes.	
2) Renewable Resources	Access to natural resources (forests, wildlife, water) vital for subsistence and reproduction. (para. 15a)	Native communities have priority in obtaining extraction contracts, sole rights to extract timber & fauna from their territories. But, govt. frequently grants logging licenses to non-IP.	Constitutional right to be consulted prior to exploitation of natural resources in communal territories.	Constitutional guarantee of use and sustainable exploitation of natural resources. (art. 171)	
3) Non-renewable Resources	[no specific provision]	Hydrocarbon Law 26,221 (1993) does not give native communities any rights or compensation for activities carried out on their lands. ^{lxxi}	Constitutional right to be consulted on, but not to approve, oil exploration. ^{lxxii}	Constitutional guarantee of use and sustainable exploitation of natural resources. (art. 171)	
IV. Political and Socio-Economic Inclusion	Informed participation (para 8); receive culturally compatible social and economic benefits. (para. 6)	Ensured by Indigenous Affairs Commission, which has 4 representatives of peasant & native communities.	Ensured by CONAIE (national body for promotion of IP rights). IP have right to participate in official law-making organs (art. 84); representation in Supreme Court (art. 275). ^{lxxiii}	VAIPO (Ministry for Indigenous and Original Peoples Affairs).	
1) Self-Government	Participation through representative organizations and traditional leaders. (para.	Constitution grants peasant & native communities juridical personality and	Electoral circumscriptions established and parochial, cantonal and	Autonomy at municipal level (1994 Law of Popular Participation). Customary law (art. 171)	

DIMENSIONS	OD 4.20	Peru	Ecuador	Bolivia	Uruguay
	15d) Encourage early handover of project management to IP. (para. 14f)	autonomy with respect to organization, communal work, and use and disposal of lands. But, 1995 law erodes autonomy in organization. ^{lxxiv} Customary law recognized (art. 149).	provincial boundaries drawn based on presence of IP and Afro-Ecuadorians (art. 224); endowed with autonomous powers ^{lxxv} (art. 228); customary law recognized (art. 191).	and jurisdiction of IP authorities over internal community affairs recognized. ^{lxxvi} Code of Penal Procedure lets defendants choose whether indigenous or state jurisdiction will prevail.	
2) Economic Development	Incorporation of IP into development process. (para. 9)	[no specific provision]	[no specific provision]	Law of Popular Participation enables IP participation in local development decisions. ^{lxxvii}	
3) Social Services	Special project components on health/nutrition and education. (para. 15) Possible contribution of traditional health providers. (para. 15e)	Constitutional right to bilingual and intercultural education (art. 17); 3 programs offering food to needy populations. ^{lxxviii}	Bilingual, intercultural education guaranteed. (arts. 68, 69, 84)	Right to bilingual education. (1994 Educational Reform Law)	
V. Cultural Integrity	Development process should foster full respect for cultural uniqueness of IP. (para. 6)	Right to ethnic and cultural identity. (art. 2(19))	Explicit acknowledgement that state is pluricultural and multiethnic. (art. 1)	Explicit acknowledgement that state is multiethnic and pluricultural. (art. 1)	
1) Religion	Religious beliefs should be taken into account in the IPDP design. (para. 14d)	Constitutional right to freedom of religion.	Constitutional right to freedom of religion.	Roman Catholicism is official religion, but constitutional right to freedom of religion.	
2) Language	Special project component on linguistic preservation. (para. 15)	Right to use own language before any authority through an interpreter. (arts. 2(19), 48)	Spanish is sole official language, but IP languages are of “official use” (to be determined by law). (art. 1)	IP languages are not official languages; but, constitutional right to translation in judicial proceedings (art. 116).	

DIMENSIONS	OD 4.20	Peru	Ecuador	Bolivia	Uruguay
3) Indigenous Knowledge	Draw upon indigenous knowledge. (paras. 8 and 14e)	(Proposed) Regime for the Protection of the Collective Knowledge of the IP and Regulations on Access to Genetic Resources. ^{lxxix}	1996 Law for the Protection of Biodiversity guarantees peasant & indigenous communities rights over knowledge and use thereof.	1997 Common Regime for Access to Genetic Resources: IP have right to share in benefits derived from their knowledge or resources.	

DIMENSIONS	OD 4.20	Mexico	Honduras	Nicaragua	Guatemala
I. Identification	Close attachment to ancestral territories and natural resources; Self-identification and identification by others as members of distinct group; Indigenous Language; Presence of Customary social and political Institutions; Primarily subsistence-oriented production. (para. 5)	12 million IP, constituting 14% of total population, divided amongst 62 groups. Official recognition of IP is left to the constitutions and laws of the states (art. 2).	700,000 IP, constituting 15% of total population.	160,000 IP, constituting 5% of total population. Miskitus live mainly in the north, Mestizos and Sumus-Mayagnas in the agricultural frontier zone, Creoles in urban zones, Ramas and Garifunas in coastal communities.	5.3 million IP, constituting 66% of total population. 22 Mayan ethnic groups, Xincas, Garifunas.
II. Regulatory Framework	OD 4.20	Constitution (amended by 2001 Law on Indigenous Rights & Culture (LIRC)); ^{lxxx} state laws; ^{lxxxi} ILO 169 ratified.	1982 Constitution contains a few general provisions; ILO 169 ratified (international law has status of constitutional law).	1987 Constitution; 1987 Autonomy Statute of the Nicaraguan Atlantic Coast Autonomous Regions. ^{lxxxii}	Accord on the Identity and Rights of Indigenous Peoples (AIDPI) (yet to be implemented); ^{lxxxiii} ILO 169 ratified.
1) Whom does regulatory framework address?	IP, ethnic minorities, tribal groups, scheduled tribes.	Indigenous peoples.	Indigenous peoples.	Communities of the Atlantic Coast.	Indigenous peoples.
2) Presence of IP		Yes.	Yes.	Yes.	Yes.
III. Land/Resource Rights	Particular attention should be given to IP rights to use and develop lands they occupy. (para. 15a)	2001 constitutional reforms do not recognize rights of IP to collective land ownership.	Duty of state to protect rights of IP, especially with respect to the lands and forests where they are settled. (art. 346)	Right to collective property recognized (art. 5); right to enjoyment, use and benefit of waters and forests (art. 89).	Constitutional recognition of right of IP to maintain the system of administration of the lands they hold.
1) Land	Recognition of customary/traditional	Law will protect the integrity of the lands of	1998: over 100 land titles encompassing over	Communal land is inalienable,	Ownership rights; Access rights to lands

DIMENSIONS	OD 4.20	Mexico	Honduras	Nicaragua	Guatemala
	land tenure OR long-term renewable rights of custodianship and use. (para. 15c)	indigenous groups. (art. 27 (VII))	250,000 acres, issued to IP groups. Restrictions on land ownership within 40 km. of border. ^{lxxxiv}	imprescriptible, unattachable. ^{lxxxv} Law No. 88 (1990): state must guarantee rights acquired to property by Atlantic Coast communities. ^{lxxxvi}	not exclusively occupied by IP, but which they have historically used for traditional activities and subsistence (AIDPI).
2) Renewable Resources	Access to natural resources (forests, wildlife, water) vital for subsistence and reproduction. (para. 15a)	Preferential (but not sole) use & enjoyment of natural resources of the places they inhabit & occupy, except in strategic regions. (art. 2(6))	[no specific provision]	Regional Autonomous Councils responsible for administration of natural resources, including approval of all concessions granted. ^{lxxxvii}	Right to participate in use, administration, conservation of natural resources; resource exploitation that affects IP' lifestyle must receive their prior approval (AIDPI).
3) Non-renewable Resources	[no specific provision]	[no specific provision]	1998 General Mining Law gives mining companies use rights over water and right to petition for removal of IP living near mineral deposits. ^{lxxxviii}	Pending agreement between Regional & Central govts., local inhabitants must receive just proportion of benefits from all resource extraction. (s. 9, Autonomy Law)	Prior informed consent of IP required if resource exploitation affects their way of life; right to compensation for loss suffered as a result of such activities (AIDPI).
IV. Political and Socio-Economic Inclusion	Informed participation (para 8); receive culturally compatible social and economic benefits. (para. 6)	Ensured by National Indigenous Institute.	[no specific institutions]	2 multiethnic Atlantic Coast autonomy regimes established by 1987 Autonomy Law and art. 181 of Constitution. ^{lxxxix}	5 official commissions comprising govt. & IP representatives guarantee IP participation in peace process. ^{xc}
1) Self-Government	Participation through representative organizations and traditional leaders. (para.	States free to define extent of IP autonomy; ^{xc} autonomy at municipal level guaranteed. ^{xcii}	Large number of indigenous federations such as FETRIXY, CONPAH, COPIN and	Autonomous areas have a Regional Council ^{xcv} and Regional Coordinator.	AIDPI recognizes indigenous forms of social organization, right of IP to manage their

DIMENSIONS	OD 4.20	Mexico	Honduras	Nicaragua	Guatemala
	15d) Encourage early handover of project management to IP. (para. 14f)	Right to elect in accordance with traditional norms and procedures, authorities for the exercise of internal govt. (art. 2(A)(3)) ^{xciii} Right to apply IP law in resolving internal conflicts (art. 2(A)(2)). ^{xciv}	OFRANEH (representative rather than self-governing organizations). No recognition of customary law.	IP have right to their own forms of social organization (art. 180) and to administer local affairs ^{xcvi} according to tradition. Customary law recognized (s. 18, Autonomy Law).	internal affairs as per customary norms, ^{xcvii} IP right of participation at all levels in decisions that affect them. Courts in indigenous rural areas apply Mayan law in dealing with minor offences.
2) Economic Development	Incorporation of IP into development process. (para. 9)	IP to be consulted in drafting of national, state and municipal Development Plans and their recommendations incorporated (art. 2(B)(9)). Somewhat integrationist. ^{xcviii}	[no specific provision]	Regional Autonomous Councils in charge of development of both autonomous regions.	IP have right to determine their own development priorities, particularly in education, health, culture and infrastructure (AIDPI).
3) Social Services	Special project components on health/nutrition and education. (para. 15) Possible contribution of traditional health providers. (para. 15e)	Teaching to be promoted in Spanish, without prejudice to protection and promotion of indigenous languages. (General Education Act)	[no specific provision]	Right to bilingual, intercultural education (art. 121, <i>see also</i> Autonomy Law); right to protect and promote traditional medicine (s. 11(8), Autonomy Law).	State obliged to promote bilingual and intercultural education, development of mass media in IP languages (AIDPI).
V. Cultural Integrity	Development process should foster full respect for cultural uniqueness of IP (para 6)	Law will protect and promote IP cultures, customs. (art. 4)	Duty of state to promote native culture. (art. 173)	Right to maintain and develop identity and culture. (art. 5)	State obliged to recognize and promote indigenous lifestyles, customs, traditions, dress, etc.
1) Religion	Religious beliefs should be taken into account in the IPDP design. (para. 14d)	Constitutional right to freedom of religion. (art. 24)	Constitutional right to freedom of religion.	Autonomy Law guarantees religious freedom.	State obliged to protect spirituality, sacred ceremonies and sites (AIDPI).
2) Language	Special project component on linguistic	Law will protect and promote development of	IP languages not recognized as official	IP languages are official languages in autonomous	State obliged to promote IP languages; right to

DIMENSIONS	OD 4.20	Mexico	Honduras	Nicaragua	Guatemala
	preservation. (para. 15)	IP languages. (art. 4)	languages.	areas (s. 5, Autonomy Law). ^{xcix}	interpreter during criminal proceedings.
3) Indigenous Knowledge	Draw upon indigenous knowledge. (paras. 8 and 14e)	Access to genetic resources only after prior informed consent of owners of land on which resources located; owners have right to share in benefits.	[no specific provision]	[no specific provision]	AIDPI contains provisions recognizing the importance of IP science and technology, but no restrictions on the use of such technology by non-IP.

DIMENSIONS	OD 4.20	El Salvador	Panama	Russia	Kazakhstan
I. Identification	Close attachment to ancestral territories and natural resources; Self-identification and identification by others as members of distinct group; Indigenous Language; Presence of Customary social and political Institutions; Primarily subsistence-oriented production. (para. 5)	400,000 IP, constituting 7% of total population. 3 main groups: Nahua (Pipil), Maya (Pocomam), Lenca.	14,000 IP, constituting 6% of total population. Major groups: Embera-Wounan, Ngobe-Bugle, Kuna.	Official list of 45 IP (43 from North, Siberia and Far East; 2 from Caucasus). 1999 law defines IP as those who: (i) live on territories inhabited by ancestors; (ii) preserve lifestyle and economic activities of ancestors; (iii) number less than 50,000 (iv) self-identification as distinct ethnic community. ^c	Over 100 nationalities inhabit the country. Only people unambiguously identified as “indigenous” in the literature are the (majority) Kazakh. Most minorities originally from other states (Volga Germans, Crimean Tartars, Uzbeks, Chechens, Ingush, Poles, Greeks, Koreans) except for Uighurs.
II. Regulatory Framework	OD 4.20	No regulatory framework. 1982 Constitution has one provision on language; ILO 107 ratified.	Constitution; laws establishing <i>comarcas</i> ; Law No. 24,083 of 2000.	Constitution ^{ci} ; specific legislation passed in 1999, 2000 & 2001 ^{cii} (for IP of the North)	No regulatory framework even for ethnic minorities, except provisions on religion, language.
1) Whom does regulatory framework address?	IP, ethnic minorities, tribal groups, scheduled tribes.		Indigenous Peoples.	Small Peoples of the North; ethnic groups in Caucasus.	
2) Presence of IP		Yes.	Yes.	Yes.	Ethnic minorities and tribal groups.
III. Land/Resource Rights	Particular attention should be given to IP rights to use and develop lands they occupy. (para. 15a)	Collective property rights of IP not recognized.	Collective property rights of IP recognized (art. 123); indigenous self-governing territories (<i>comarcas</i>) created and lands demarcated. ^{ciii}	State obliged to protect environment and livelihoods of IP. (art. 73(m))	
1) Land	Recognition of customary/traditional	No IP-specific provisions, but state	Lands within <i>comarca</i> boundaries are the	1999 law designates “lands of traditional	

DIMENSIONS	OD 4.20	El Salvador	Panama	Russia	Kazakhstan
	land tenure OR long-term renewable rights of custodianship and use. (para. 15c)	obliged to prevent environmental contamination and maintain ecological balance. (art. 97)	collective property of the <i>comarca</i> ; ^{civ} use rights administered by traditional IP authorities; lands inalienable to persons outside the <i>comarca</i> . ^{cv}	natural resource use” where IP would have priority rights. However, no federal legislation on IP land ownership (draft law is under consideration).	
2) Renewable Resources	Access to natural resources (forests, wildlife, water) vital for subsistence and reproduction. (para. 15a)	No IP-specific provisions, but state obliged to ensure rational use of fauna, flora, land and water to avoid depletion. (art. 97)	IP must be consulted before logging licenses awarded. ^{cv1} Kuna legislative proposal would make EIA mandatory for all projects affecting natural resources. ^{cvii}	EIAs mandatory for development projects; local people have right to information. IP hunters have priority in obtaining hunting licenses, but have to pay same price.	
3) Non-renewable Resources	[no specific provision]	[no specific provision]	Kuna <i>comarca</i> : no right to profits from mining, but right to be indemnified for damage suffered; ^{cviii} Embera <i>comarca</i> : right to share in profits. ^{cix}	Construction of industrial objects (e.g. oil pipelines) on IP lands must be discussed in advance with residents and approved by referendum. ^{cx}	
IV. Political and Socio-Economic Inclusion	Informed participation (para 8); receive culturally compatible social and economic benefits. (para. 6)	Ministry of Culture is responsible for indigenous affairs.	Office of Indigenous Policy (Ministry of Govt. & Justice); Indigenous Affairs Commission in Legislative Assembly (established 1995).	Ministry of Federation Affairs & Nationalities & Migration Policy has a Department for the Affairs of Small Indigenous Peoples.	
1) Self-Government	Participation through representative organizations and traditional leaders. (para.	National Association of Indigenous Salvadorans (ANIS) is the main representative	4 regions of indigenous self-govt. (<i>comarcas</i>) recognized. ^{cx1} Indigenous <i>comarcas</i> elect their own	RAIPON is the main representative organization. In trials involving IP, IP	Organizations working against territorial integrity of the state are forbidden (art. 5); in

DIMENSIONS	OD 4.20	El Salvador	Panama	Russia	Kazakhstan
	15d) Encourage early handover of project management to IP. (para. 14f)	organization; gained legal status in 1982. Customary law not recognized.	representatives to National Assembly. ^{cxii} Electoral circumscriptions may be created to provide districts for IP (art. 141). IP cannot form political parties. ^{cxiii} Customary law recognized.	customs and traditions may be taken into account; authorized representatives may participate in defense of IP (1999 law).	practice, political groups organized on ethnic lines (other than Kazakh) are banned or closely monitored.
2) Economic Development	Incorporation of IP into development process. (para. 9)	[no specific provision]	[no specific provision]	Traditional lifestyle, enterprises, trades and crafts protected. (art. 8, 1999 law)	
3) Social Services	Special project components on health/nutrition and education. (para. 15) Possible contribution of traditional health providers. (para. 15e)	[no specific provision]	Education Law guarantees intercultural, bilingual education for IP.	Special educational programs for Small Peoples of the North. ^{cxiv} IP have right to establish mass media in native languages (1999 law).	
V. Cultural Integrity	Development process should foster full respect for cultural uniqueness of IP. (para. 6)	State obliged to preserve cultural history of the country. (art. 63)	State obliged to recognize and respect ethnic identity of IP. (art. 86)	Right to preserve and develop cultural and ethnic identity. ^{cxv}	
1) Religion	Religious beliefs should be taken into account in the IPDP design. (para. 14d)	Constitutional right to freedom of religion.	Constitutional right to freedom of religion, provided that “Christian morality and public order” are respected.	Constitutional right to freedom of religion. (art. 28)	Constitutional right to freedom of religion.
2) Language	Special project component on linguistic	State obliged to recognize and respect	Indigenous languages are objects of study.	Right to preserve and develop native	State must promote study and development

DIMENSIONS	OD 4.20	El Salvador	Panama	Russia	Kazakhstan
	preservation. (para. 15)	native languages. (art. 62)	conservation and dissemination. (art. 86)	languages. (1999 law)	of languages of people of Kazakhstan. (art. 7)
3) Indigenous Knowledge	Draw upon indigenous knowledge. (paras. 8 and 14e)	[no specific provision]	Law No. 24,083 of 2000 protects collective intellectual property rights and traditional knowledge of IP; establishes system to register, promote and market their rights.	[no specific provision]	

DIMENSIONS	OD 4.20	Turkey	India	Pakistan	Nepal
I. Identification	Close attachment to ancestral territories and natural resources; Self-identification and identification by others as members of distinct group; Indigenous Language; Presence of Customary social and political Institutions; Primarily subsistence-oriented production. (para. 5)	13 million Kurds, constituting 20% of total population. Not officially recognized as IP; ^{cxvi} satisfy requirements of IP definition under international law, except no self-identification as IP. ^{cxvii} 70,000 Yoruk (nomadic tribal group in Taurus mountains of southern Turkey). 50,000 Roma.	67.75 million IP, constituting 8.08% of total population. ^{cxviii} Divided amongst 4835 communities. ^{cxix} Official list of ___ scheduled tribes. Status of “Scheduled tribe” is given by the state pursuant to art. 342 of the Constitution.	1981 census: 2.197 million people in Federally Administered Tribal Areas (FATA). ^{cxx} 11 major tribes and sub-tribes. ^{cxxi} Several ethnic minorities in other parts of the country (Sindhis, Mohajirs, etc.).	<i>List of 61 janajati peoples (“nationalities communities”) approved by Cabinet in April 1999. Term janajati refers to ethnic minorities and tribal groups. No official recognition of IP. 1991 census: nationalities constitute 35.6% of total population.</i> ^{cxvii}
II. Regulatory Framework	OD 4.20	No regulatory framework, but several provisions restricting expression of ethnic identity.	Constitution (Schedules V & VI), ^{cxixiii} specific laws; ^{cxixiv} ILO 107 ratified.	Constitution; ILO 107 ratified.	Constitution contains a few general provisions; some administrative measures.
1) Whom does regulatory framework address?	IP, ethnic minorities, tribal groups, scheduled tribes.		Scheduled tribes (STs) (some legal provisions are common to scheduled castes).	Constitutional provisions on tribal areas (not tribal groups as such).	<i>Janajati</i> (ethnic minorities and tribal groups).
2) Presence of IP		Ethnic minorities and tribal groups.	Tribal groups.	Ethnic minorities and tribal groups.	Ethnic minorities and tribal groups.
III. Land/Resource Rights	Particular attention should be given to IP rights to use and develop lands they occupy. (para. 15a)		Autonomous districts/regions demarcated for STs. ^{cxv} Areas covered by Inner Line Permit are exclusively for natives. ^{cxvii}	No legislative provisions, but traditional tribal institution (<i>jirga</i>) commonly discusses land and resource use issues.	No legal remedies for IP to protect their resources. ^{cxvii}

DIMENSIONS	OD 4.20	Turkey	India	Pakistan	Nepal
1) Land	Recognition of customary/traditional land tenure OR long-term renewable rights of custodianship and use. (para. 15c)		Elected District/Regional Councils in autonomous districts/regions of Schedule VI states can legislate on land allotment, occupation and use; ^{cxxviii} this power is subject to eminent domain of state.	<i>Qaumi/Ulusi jirga</i> (assembly of elders from each household in the village) may be convened to discuss matters relating to collective property rights.	<i>Kipat</i> system of collective land ownership eroded from 18 th century onwards. All commons and grazing lands owned by the state (Act to nationalize the meadow “ <i>kharka</i> land”).
2) Renewable Resources	Access to natural resources (forests, wildlife, water) vital for subsistence and reproduction. (para. 15a)		Elected District/Regional Councils can legislate on management of forests, use of water resources, regulation of shifting cultivation. ^{cxxix}	<i>Qaumi/Ulusi jirga</i> may be convened to discuss distribution of irrigation water.	All forests owned by the state (1957 Private Forest Nationalization Act); current practice of community-based conservation has given local communities greater rights. ^{cxxx}
3) Non-renewable Resources	[no specific provision]		Autonomous district councils entitled to share of royalties from mining licenses and leases. (para. 9, Schedule VI)	[no specific provision]	[no specific provision]
IV. Political and Socio-Economic Inclusion	Informed participation (para 8); receive culturally compatible social and economic benefits. (para. 6)		Ensured by National Commission for SCs & STs. ^{cxxxi} Seats reserved for STs in Lok Sabha (art. 330), state legislatures (art. 332), panchayats (art. 243D), municipalities (art. 243T).	Tribes elect 8 members to National Assembly and 8 members to Senate.	Ensured by the National Committee for the Development of Nationalities under the Ministry of Local Development. <i>De facto</i> discrimination against <i>janajati</i> in citizenship. ^{cxxxii}

DIMENSIONS	OD 4.20	Turkey	India	Pakistan	Nepal
1) Self-Government	Participation through representative organizations and traditional leaders. (para. 15d) Encourage early handover of project management to IP. (para. 14f)		Autonomous districts/regions demarcated in Schedule VI states; governed by elected District/Regional Councils which have extensive legislative, ^{cxxxiii} executive ^{cxxxiv} and judicial ^{cxxxv} powers. Tribes Advisory Council to advise Governor in Schedule V states. ^{cxxxvi}	FATA has autonomy. ^{cxxxvii} Grassroots level govt. by tribal representatives (Maliks and Lungi Holders). ^{cxxxviii} Khassadars (local police) maintain law and order. Justice administered through traditional <i>jirga</i> system. ^{cxxxix} Frontier Crimes Regulation 1901 and tribal law enforced.	Political parties cannot be formed on the basis of religion, caste, tribe, language (art. 113(3)); ^{cxl} main representative organization is Nepal Federation of Nationalities (NEFEN). No autonomy for <i>janajati</i> peoples or recognition of their customary law.
2) Economic Development	Incorporation of IP into development process. (para. 9)		National SCs & STs Finance & Development Corporation provides financing for self-employment activities.	<i>Qaumi/Ulusi jirga</i> may take development-related decisions (e.g. selection of sites for schools, etc.).	Nationalities' representatives to be included in Village Development Committees. 9 th Plan has programs for IP. ^{cxli}
3) Social Services	Special project components on health/nutrition and education (para. 15). Possible contribution of traditional health providers (para. 15e).		Affirmative action for STs (arts. 15(4), 46) in higher educational institutions, police forces, state services (arts. 16(4), 335). District/Regional Councils have autonomous power over education. ^{cxlii}	[Literacy rate in FATA very low: 18.09% (male), 0.79% (female).] ^{cxliii}	Communities have the right to impart education up to the primary level in their native languages. (art. 18(2))
V. Cultural Integrity	Development process should foster full respect for cultural uniqueness of IP (para 6)		Cultural and educational rights guaranteed to all (arts. 29-31) (not ST-specific).	Constitutional right of cultural preservation (art. 28) (not tribal-specific).	Cultural and educational rights guaranteed to all (art. 18) (not <i>janajati</i> -specific).

DIMENSIONS	OD 4.20	Turkey	India	Pakistan	Nepal
1) Religion	Religious beliefs should be taken into account in the IPDP design. (para. 14d)	Secular state with right to freedom of religion.	Constitutional right to freedom of religion. (arts. 25-28)	Constitutional right to freedom of religion. (art. 20)	Nepal proclaimed as a Hindu kingdom, but right to freedom of religion. (art. 19)
2) Language	Special project component on linguistic preservation. (para. 15)	Restrictions on use of languages other than Turkish for broadcasting, ^{cxliv} education. ^{cxlv}	Constitutional right of linguistic preservation. (art. 29(1))	Constitutional right of linguistic preservation. (art. 28)	All native languages are national languages (art. 6(1)(2)); right of linguistic preservation (art. 18(1)).
3) Indigenous Knowledge	Draw upon indigenous knowledge. (paras. 8 and 14e)		Biodiversity Bill 2000 ^{cxlvi} and Patent Act as amended in 1999 ^{cxlvii} protect IP knowledge.	[no specific provision]	[no specific provision]

DIMENSIONS	OD 4.20	Tunisia	Morocco	Cote d'Ivoire	Ethiopia
I. Identification	Close attachment to ancestral territories and natural resources; Self-identification and identification by others as members of distinct group; Indigenous Language; Presence of Customary social and political Institutions; Primarily subsistence-oriented production. (para. 5)	Government estimates that Amazigh (Berber) constitute less than 3% of total population and are almost completely assimilated. ^{cxlviii} Some sources suggest that there are no longer Berbers in Tunisia. ^{cxlix} US State Department characterizes Tunisian Berbers as IP ^{cl} , but Moroccan Berbers as ethnic minorities.	Berbers constitute 30-40% of total population ^{cli} ; some sources suggest that 60% of total population is of Berber descent. ^{clii} Not officially recognized as a separate ethnic group.	More than 60 ethnic groups divided into 5 families: Akan 42% (largest group Baoule), Northern Mande 18% (largest group Malinke), Krou 11% (largest group Bete), Voltaic 18% (largest group Senoufou), Southern Mande 10% (largest group Yacouba). ^{cliii} There are 4000 Ligbi(Ligwi), Noumou, and Banda of Numasa in the country, which are all Mande speaking. These could be considered to be an ethnic minority as they are Mande-speaking people among the Kwa-speaking people (all the Southern and Central part of the country). ^{cliv}	Constitution defines “ <i>nation, nationality or people</i> ” as a group of people with common culture or similar customs, language, self-identification as distinct group and who inhabit identifiable, predominantly contiguous territory (art. 39(5)).” More than 80 ethnic groups. Only Gaia Atlas ^{clv} considers some of these as IP (Afar, Eritrean, Oromo, Somali, Tigrayan groups). In the Southern Omo region of Ethiopia, there are several tribal groups that have been relatively isolated from the modern world, living their lives as they have for centuries. These tribes that inhabit the area--the Samburu, Turkana, Mursi, Hamar, Gabra, Borana, Karo and Ebore—meet to varying degrees the five characteristics stated in the OD. ^{clvi}
II. Regulatory Framework	OD 4.20	No regulatory framework addressing	No regulatory framework addressing	No regulatory framework.	Constitution

DIMENSIONS	OD 4.20	Tunisia	Morocco	Cote d'Ivoire	Ethiopia
		IP/tribals/ethnic minorities. ILO 107 ratified.	IP/tribals/ethnic minorities. ^{clvii}		
1) Whom does regulatory framework address?	IP, ethnic minorities, tribal groups, scheduled tribes.				All nations, nationalities and peoples of Ethiopia (some provisions are specific to minority nationalities). ^{clviii}
2) Presence of IP		Tribal groups.	Tribal groups.	Tribal groups / ethnic minorities.	Tribal groups / ethnic minorities.
III. Land/Resource Rights	Particular attention should be given to IP rights to use and develop lands they occupy. (para. 15a)				Concurrent ownership by State and Peoples of Ethiopia; land is common property of nations, nationalities and peoples; not subject to sale or other means of exchange.
1) Land	Recognition of customary/traditional land tenure OR long-term renewable rights of custodianship and use. (para. 15c)				Peasants have right to obtain land without payment (art. 40(4)); pastoralists have right to free land for grazing and cultivation (art. 40(5)). Both have rights against eviction.
2) Renewable Resources	Access to natural resources (forests, wildlife, water) vital for subsistence and reproduction. (para. 15a)				Ownership of natural resources is vested concurrently in the State and Peoples of Ethiopia. (art. 40(3))
3) Non-renewable Resources	[no specific provision]				<i>See above.</i>

DIMENSIONS	OD 4.20	Tunisia	Morocco	Cote d'Ivoire	Ethiopia
IV. Political and Socio-Economic Inclusion	Informed participation (para 8); receive culturally compatible social and economic benefits. (para. 6)		Some advisors of King Mohammed VI are Berbers, including spokesman Hassana Aourid. ^{clix}		Reservation for minority nationalities ^{clx} and peoples: 20 seats in House of Peoples' Representatives (art. 54(3)); 1 seat for each group in House of Federation (art. 61).
1) Self-Government	Participation through representative organizations and traditional leaders. (para. 15d) Encourage early handover of project management to IP. (para. 14f)				Nations, nationalities, peoples have right to self-determination (including right of secession ^{clxi}), right to establish institutions of govt. in their territories and to equitable representation in state & federal governments. (art. 39)
2) Economic Development	Incorporation of IP into development process. (para. 9)				State must provide special assistance to nations, nationalities, peoples who are least advantaged in economic & social development. (art. 89(4))
3) Social Services	Special project components on health/nutrition and education. (para. 15) Possible contribution of traditional health providers. (para. 15e)		Education Reform Bill permits teaching of Tamazight in primary schools only to facilitate the learning of Arabic; research centers to be established in universities to study		Nations, nationalities, peoples must be equitably represented in armed forces (art. 87(1)); however ethnic diversity is less at higher levels – Tigrayans over-represented.

DIMENSIONS	OD 4.20	Tunisia	Morocco	Cote d'Ivoire	Ethiopia
			Tamazight & Berber culture.		
V. Cultural Integrity	Development process should foster full respect for cultural uniqueness of IP. (para. 6)				State must respect identity of nations, nationalities, and peoples. (art. 88(2))
1) Religion	Religious beliefs should be taken into account in the IPDP design. (para. 14d)	Right to freedom of conscience and belief. (art. 5)	Islam is state religion, but freedom of worship for all. (art. 6)	Constitutional right to freedom of religion.	Constitutional right to freedom of religion. (art. 27)
2) Language	Special project component on linguistic preservation. (para. 15)	Berber language in Tunisia (Chelha) spoken only in a few small towns in the south.	Arabic is sole official language. Tamazight cannot be used in courts. Demands / attempts to use Berber language repressed. ^{clxii}		Constitutional right to speak, write and develop own language (art. 39(2)); all languages enjoy equal state recognition (art. 5). ^{clxiii}
3) Indigenous Knowledge	Draw upon indigenous knowledge. (paras. 8 and 14e)				[no specific provision]

DIMENSIONS	OD 4.20	Ghana	Rwanda		
I. Identification	Close attachment to ancestral territories and natural resources; Self-identification and identification by others as members of distinct group; Indigenous Language; Presence of Customary social and political Institutions; Primarily subsistence-oriented production. (para. 5)	Many ethnic groups speaking more than 50 languages and dialects. 44% Akan (coast), Ashanti (forests north of the coast), Guan (plains of Volta river), Ga - and Ewe-speaking peoples (south, southeast), Moshi-Dagomba-speaking tribes (northern, upper regions). There are 10000 Ligbi(Ligwi), Noumou, and Banda of Numasa in the country, which are all Mande speaking. These could be considered to be an ethnic minority as they are Mande-speaking people among the Kwa-speaking people (all the Southern and Central part of the country). ^{clxiv}	Batwa/Twa number 10-27,000, constituting 0.2-0.4% of total population. Self-identification as IP. Estimated that as a result of the genocide and related conflict, only half the pre-1994 population remains; most of the survivors are women and children; problems of severe discrimination and marginalization exacerbated by the absence of men.		
II. Regulatory Framework	OD 4.20	1992 Constitution; 1971 Chieftaincy Act.	No regulatory framework.		
1) Whom does regulatory framework address?	IP, ethnic minorities, tribal groups, scheduled tribes.	All tribal groups (not just minority tribes).			
2) Presence of IP		Tribal groups.	Yes.		
III. Land/Resource Rights	Particular attention should be given to IP	Collective ownership and administration of			

DIMENSIONS	OD 4.20	Ghana	Rwanda		
	rights to use and develop lands they occupy. (para. 15a)	stool and skin lands. ^{clxv} Right to compensation and culturally appropriate resettlement in the event of displacement. ^{clxvi}			
1) Land	Recognition of customary/traditional land tenure OR long-term renewable rights of custodianship and use. (para. 15c)	Stool lands vest in the appropriate stool on behalf of, and in trust for, subjects of the stool in accordance with customary law; individual rights over stool land prohibited. Fixed portions of revenue accruing from stool lands go to traditional authorities. ^{clxvii}	[In 1993, only 1.6% of Batwa had sufficient land to farm.]		
2) Renewable Resources	Access to natural resources (forests, wildlife, water) vital for subsistence and reproduction. (para. 15a)	All water resources owned by state. (art. 257(6))			
3) Non-renewable Resources	[no specific provision]	All mineral resources owned by state. (art. 257(6))			
IV. Political and Socio-Economic Inclusion	Informed participation (para 8); receive culturally compatible social & econ benefits. (para 6)	Ensured by the National House of Chiefs and Regional Houses of Chiefs. ^{clxviii}	1 Batwa representative on the National Commission for Human Rights.		
1) Self-Government	Participation through representative organizations and traditional leaders. (para. 15d)	Tribal chiefs (including female tribal authorities ^{clxix}) mediate local matters & enforce customary law in matters	APB, PIDP-Kivu, CAURWA are the main representative organizations.		

DIMENSIONS	OD 4.20	Ghana	Rwanda		
	Encourage early handover of project management to IP. (para. 14f)	of divorce, child custody, property. However, 1992 Constitution erodes authority of traditional rulers & vests it in courts & district assemblies.			
2) Economic Development	Incorporation of IP into development process. (para. 9)	Govt. authorities constitutionally obliged to consult with stools and other traditional authorities in developmental matters; must provide relevant info and data. (art. 267(7), (8))			
3) Social Services	Special project components on health/nutrition and education (para. 15); Possible contribution of traditional health providers (para. 15e).	State must endeavor to integrate appropriate customary values in education. (art. 39)	[Less than 0.5% of the Batwa population worldwide has had a full secondary education.]		
V. Cultural Integrity	Development process should foster full respect for cultural uniqueness of IP. (para. 6)	Right to cultural integrity, but cultural practices which dehumanize / are injurious to physical, mental well-being are prohibited. (art. 26)			
1) Religion	Religious beliefs should be taken into account in the IPDP design. (para. 14d)	Constitutional right to freedom of religion. (art. 21(1)(c))			
2) Language	Special project component on linguistic preservation.	Knowledge of an “indigenous language” is a prerequisite for			

DIMENSIONS	OD 4.20	Ghana	Rwanda		
	(para. 15)	citizenship. (art. 9(2))			
3) Indigenous Knowledge	Draw upon indigenous knowledge. (paras. 8 and 14e)	[no specific provision]			

PART III: ANALYTICAL SUMMARY OF COMPARISON OF OD 4.20 AND THE REGULATORY FRAMEWORKS OF CANADA, NEW ZEALAND, NORWAY AND UNITED STATES

INTRODUCTION

12. The purpose of this summary is to highlight the main findings from a comparative analysis of the World Bank's Operational Directive on Indigenous Peoples (OD 4.20) and the respective regulatory frameworks of four donor countries: Canada, New Zealand, Norway and United States. Details of this assessment are provided in the reference table and its accompanying notes. This comparison forms part of the larger evaluation question to what extent standards and objectives of OD 4.20 are relevant in relation to those of other stakeholders.

13. This summary must be preceded with a caveat concerning the scope and usefulness of a direct comparison between an Operational Directive of a multilateral development bank and the laws and policies of individual member states. The Bank's operational policies and procedures do not by themselves constitute binding rules of domestic or international law. They are primarily instructions from Bank management to its staff to adhere to certain policies, standards and procedures. Many operational policies, including OD 4.20, do, however, have wider legal ramifications. First, through their incorporation into loan agreements with borrowers, their standards can significantly impact national regulatory frameworks. Second, the policies are part of international practice, contributing and shaping the development of international customary law.

14. In the comparative table and in the following remarks, we have identified a number of analytical dimensions that are largely based on a review of the main issues in international standard-setting for indigenous peoples, as reflected in ILO Convention 169 and the Draft United Nations Declaration on the Rights of Indigenous Peoples. These dimensions cover the identification of IP, their rights to land and resources, standards of political and socio-economic inclusion and the protection of their cultural integrity.

IDENTIFICATION

15. OD 4.20 does not provide a single definition of IP, but rather lists several cultural and socio-economic criteria that characterize them. It also points out that national laws may include "specific definitional clauses and legal frameworks that provide a preliminary basis for identifying indigenous peoples." The laws of the four donor countries do just that. In sharp contrast to the enumeration of the directive, all four use a legal "membership" definition, based on racial, ethnic and linguistic criteria. Some elements of the Bank definition match national identity criteria such as indigenous language (Norway) and partially self-identification and identification by others as members of a distinct group (Canada, United States). None of the donor countries' definitions includes socio-economic criteria.

LAND AND RESOURCE RIGHTS

16. While the language in OD 4.20 is rather vague on the issue of indigenous land rights ("Particular attention should be given to IP rights to use and develop lands they occupy") this

formula does suggest, however, a standard that falls short of advocating full ownership. This view is corroborated by para. 15(c), which provides for “alternative arrangements to grant long-term renewable rights of custodianship and use.” In this respect, the donor countries’ standards are at least equal with the possible exception of Norway, which, despite ratification of ILO Convention 169, only grants limited usufruct rights to its Sami people. In Canada, New Zealand and the United States, indigenous title is a *sui generis* communal property right that approximates full ownership.

17. With regard to renewable resource rights such as hunting and fishing, there is broad consistency between OD 4.20 and the donors. All the regulatory frameworks acknowledge traditional resource rights, particularly where they continue to be of direct economic relevance to the IP.

18. There is no explicit provision on non-renewable (subsurface) resources in the directive but the reference about “IP rights to use and develop lands they occupy” could be interpreted to include oil and minerals. The situation in the four donor countries is diverse and complex. In New Zealand and Norway subsurface resources belong to the state; in New Zealand, however, Maori have a certain level of control over the exploitation of non-renewable resources on their lands. In Canada, some Aboriginal nations were given rights in various treaties or statutes, while in the US, tribes usually have the right to exploit oil and minerals on their lands. In other words, the standard of the OD (if there is one) is equivalent or higher than in the four donor countries.

POLITICAL AND SOCIO-ECONOMIC INCLUSION

19. The two key provisions in the OD on inclusion are para. 6 on “culturally compatible social and economic benefits” and para. 8 on “informed participation.” Due to the programmatic nature of these norms, it is more appropriate to compare them with national policy frameworks than with legal instruments. In this respect, the objectives of the OD largely match those of the policy pronouncements in Canada, New Zealand and the United States. Only Norway seems to still lack a comprehensive policy instrument addressing the political and socio-economic inclusion of the Sami people.

20. As far as self-government and political participation are concerned, the OD does not address national governance issues. The directive stipulates, however, that IP should participate in projects through representative organizations and traditional leaders, and encourages the early handover of project management to IP. These provisions reflect the dual principles of representativity and self-government. If one were to extrapolate these standards to the political realm, the OD would be more progressive than Norway’s regime, where only limited political representation and autonomy exist in the form of the Sami Parliament. It would be largely in line with the other donors: The United States have the farthest-reaching self-government regimes, deriving from the principle of tribal sovereignty; Canada is in the process of negotiating comprehensive self-government agreements with its Aboriginal nations; and in New Zealand Maori tribes are gradually extending their hitherto limited autonomous authorities.

21. With regard to the promotion of economic development, OD 4.20 calls for the “incorporation of IP into the development process.” This rather sweeping formulation is certainly in line with the various programs that exist in the four donor countries in the area of indigenous business and economic development. Only Norway seems to lack a well-established institutional infrastructure (apart from the Sami Development Fund) to enhance Sami economic welfare.

22. A similar picture emerges in relation to the provision of social services to IP. OD 4.20 mentions the need for special health and education components for IP and the potential contribution of the latter in the provision of these services. This matches Canadian, New Zealand and US regimes, all of which have extensive and targeted social programs for IP, including efforts to devolve the management and administration of the services to the beneficiaries. Again, Norway is only beginning to address the specific social needs of its indigenous minority.

CULTURAL INTEGRITY

23. The directive's call to fully "respect the cultural uniqueness of IP in the development process" is generally in line with the respective frameworks in the four donor countries, all of which have constitutional and/or statutory provisions to safeguard indigenous cultures and their manifestations. With regard to native religions, particularly New Zealand and the United States have gone beyond mere constitutional guarantees of religious freedom, and have enacted laws that specifically safeguard the practice of indigenous religions through the protection of sacred sites, taboos, etc.

24. OD 4.20 also mentions special project components on linguistic preservation. New Zealand, Norway and the United States have – in one form or the other – legally recognized indigenous languages and have programs in place that encourage the use of those tongues as medium of instruction. Canada lacks such an official recognition but is also administering a number of initiatives to safeguard and promote Aboriginal languages in education and elsewhere.

25. Last but not least, OD 4.20 calls for the use of indigenous knowledge in project management. This reference is an early example for the increasing awareness of the potential benefits of local knowledge, and the need to protect it. None of the donor countries has yet enacted laws on traditional knowledge. A claim in New Zealand, several initiatives in Canada, and cultural heritage policies in the United States cover certain aspects of indigenous knowledge but fall short of providing a comprehensive framework. In that respect, the directive's provision seems progressive.

CONCLUSION

26. The comparison of OD 4.20 and regulatory frameworks for IP in four donor countries demonstrates that the Bank's principles and standards generally match the laws and policies of Canada, New Zealand, Norway and the United States. Particularly in the categories of socio-economic inclusion and cultural integrity, the directive's provisions underline a culturally sensitive development approach, which - in the donor countries - has only found widespread acceptance in the last two decades. Discrepancies emerge on the question of defining IP: The Bank's list of criteria would not be relevant to the situation of many IP in developed countries, who no longer pursue subsistence activities or maintain traditional customary institutions. Maybe the most significant "weakness" of the OD from an indigenous perspective is its acceptance of land and resource rights that fall short of full ownership.

27. As mentioned in the introduction, this comparison has to be preliminary given the different objectives and standards of an operational policy and national legal regimes. While certain principles and standards can be discerned, a more comprehensive evaluation of the relevance of OD 4.20 to donor countries' IP policies would have to rely on an assessment of the directive's implementation. It is only through the interplay of the directive's guidance with national legal frameworks that the full scope and ramifications of OD 4.20 will emerge.

Table 3: Comparative Table of IP Policies in Four Industrialized Countries

DIMENSIONS ^{clxx}	OD 4.20 ^{clxxi-1}	Canada ^{clxxii}	New Zealand ^{clxxiii}	Norway ^{clxxiv}	United States ^{clxxv}
I. Identification	Close attachment to ancestral territories and natural resources; Self-identification and identification by others as members of distinct group; Indigenous Language; Presence of customary social and political Institutions; Primarily subsistence-oriented production. (para. 5)	"Indian" means a person who pursuant to the Indian Act is registered as an Indian or is entitled to be registered as an Indian; the entitlement derives from Band membership. ^{clxxvi}	According to several laws ^{clxxvii} 'Māori' means a person of the Māori race of New Zealand; and includes any descendant of such a person.	The Sami Act 1987 requires self-identification and the use of the Sami language (or descent from a Sami language user) for registration as elector to the Sami Assembly.	No single Federal or tribal criterion establishes a person's identity as an Indian. Government agencies use differing criteria to determine who is an Indian eligible to participate in their programs. Tribes also have varying eligibility criteria for membership. ^{clxxviii}
II. Land/ Resource Rights ^{clxxix}	Particular attention should be given to IP rights to use and develop lands they occupy. (para. 15a)	Two types of land claims: comprehensive land claims, based on continuing Aboriginal rights and title which have not been dealt with by treaty means; specific claims arising from alleged non-fulfillment of treaties. ^{clxxx}	Since 1975, the Waitangi Tribunal, a permanent government commission of inquiry, has been investigating Maori claims concerning violations of the principles of the treaty of Waitangi. ^{clxxxi}	Proposals of Sami Rights Commission for co-management arrangements currently considered by Norwegian Government. ^{clxxxii}	Two land claims processes in recent years: Claims before the Indian Claims Commission (1946-1978) and Eastern Claims through the court system. ^{clxxxiii}
1) Land	Recognition of customary/traditional land tenure OR long-term renewable rights of custodianship and use. (para. 15c)	Aboriginal title recognized by the Constitution, ^{clxxxiv} courts ^{clxxxv} and governments; Indian lands are held in the name of the crown, and Indians have legal right to occupy and possess (<i>sui generis</i> ownership). ^{clxxxvi}	Recognition of Aboriginal title. Maori own ca. 5% of NZ in communal freehold estates. ^{clxxxvii}	State maintains land ownership in Sami territories; Sami enjoy only usufructuary rights. ^{clxxxviii}	Indian lands almost always exclusively held in trust, with the US holding naked legal title and the Indians enjoying beneficial interest; ^{clxxxix} lands held communally or in allotments. ^{cxc}

DIMENSIONS ^{clxx}	OD 4.20 ^{clxxi} 1	Canada ^{clxxii}	New Zealand ^{clxxiii}	Norway ^{clxxiv}	United States ^{clxxv}
2) Renewable Resources	Access to natural resources (forests, wildlife, water) vital for subsistence and reproduction. (para. 15a)	Many treaty provisions and claims settlement agreements contain hunting, fishing and trapping rights. ^{clxci}	Recognition of traditional fisheries ^{clxcii} ; and other customary resource rights in various Waitangi settlements.	Traditional hunting and fishing rights for Sami reindeer herders. ^{clxciii}	Hunting and fishing rights on reservations, and limited ones outside; certain federal restrictions (e.g. Endangered Species Act). ^{clxciv}
3) Non-renewable Resources	[no specific provision]	Ownership of subsurface rights differs from region to region, reserve to reserve. ^{clxcv} Many modern claims settlements convey rights to minerals. ^{clxcvi}	Rights to oil and minerals vested in the Crown; access arrangements for Maori land (incl. right to refuse development on sacred land). ^{clxcvii}	Subsurface resources belong to state. ^{clxcviii}	The tribes' land title usually includes minerals in the absence of an expression to the contrary in the governing treaty or statute. ^{clxcix}
III. Political and Socio-Economic Inclusion	Informed participation (para 8); receive culturally compatible social and economic benefits. (para. 6)	<i>Gathering Strength Aboriginal Action Plan 1998</i> in response to Royal Commission on Aboriginal Peoples report. ^{ccc}	Mainstreaming Maori Affairs Policy 1991 and Closing the Gaps Initiative. ^{ccci}	Policy of Cultural Pluralism since 1984. ^{ccii}	Dual principles of tribal sovereignty and trust obligation of US. ^{cciii}
1) Self-Government	[Participation through representative organizations and traditional leaders. (para. 15d) Encourage early handover of project management to IP. (para. 14f)] ^{ccciv}	Recognition of Aboriginal right to self-government; 1995 Federal Policy to negotiate self-government agreements. ^{cccv}	Limited local governance responsibilities of traditional iwi (tribal) authorities. Constitutional convention to consult and get consent from Maori representatives on legislation affecting them. ^{ccvi}	Sami Assembly (Parliament) with largely advisory and administrative role. ^{ccvii}	Tribal constitutions, governments and courts; tribal administrations of government programs. ^{ccviii}
2) Economic Development	Incorporation of IP into development process. (para. 9)	"Equity Gap Funding" through a number of federal and provincial initiatives. ^{cccix}	Business Development Boards and BIZ. ^{cccx}	Sami Development Fund, administered by Sami Assembly.	The Indian Financing Act 1974 established a series of economic development programs for Indians. ^{cccxi}

DIMENSIONS ^{clxx}	OD 4.20 ^{clxxi} 1	Canada ^{clxxii}	New Zealand ^{clxxiii}	Norway ^{clxxiv}	United States ^{clxxv}
3) Social Services	Special project components on health/nutrition and education. (para. 15) Possible contribution of traditional health providers. (para. 15e)	Health and education services for First Nations are the responsibility of provincial, territorial and federal govts. Fed govt encourages and supports the transfer of control of social services to First Nations. ^{ccxii}	Devolution of social services to Maori providers. ^{ccxiii}	1995 Plan for Health and Social Services to the Sami People in Norway addresses social equity gaps.	Due to the trust relationship, federal duty to provide services to Indians; multiplicity of federal, state and tribal programs. ^{ccxiv}
IV. Cultural Integrity	Development process should foster full respect for cultural uniqueness of IP. (para. 6)	Protection of Indian material culture through Indian Act and cultural property laws. ^{ccxv}	taonga protection stipulated in Treaty of Waitangi. ^{ccxvi}	Constitutional provision to preserve Sami culture. ^{ccxvii}	Several regulatory instruments provide for the specific protection of Native American cultural heritage. ^{ccxviii}
1) Religion	Religious beliefs should be taken into account in the Indigenous Peoples Development plan's design. (para. 14d)	Native Religions protected by constitutional right to religious freedom and treaty provisions. ^{ccxix}	Protection of Maori sacred Sites (wahi tapu). ^{ccxx}	Constitutional right of religious freedom. ^{ccxxi}	Religious Freedom protection of First Amendment; special protection of ceremonies and sacred sites through American Indian Religious Freedom Act 1978. ^{ccxxii}
2) Language	Special project component on linguistic preservation. (para. 15)	Native Languages seldom recognized in statutes, but legislatures free to permit and promote the official use of native languages. ^{ccxxiii}	Maori language officially recognized. ^{ccxxiv} Minister of Education authorized to establish schools where Maori is primary language. ^{ccxxv}	In Sami settlement areas, Sami equal language with Norwegian. Right to tuition in Sami for primary and secondary education. ^{ccxxvi}	Protection, promotion and funding for Native American Languages, including as a medium of instruction. ^{ccxxvii}
3) Indigenous Knowledge	Draw upon indigenous knowledge. (paras. 8 and 14e)	Traditional Knowledge Policy in NWT; integration of indigenous knowledge in EA; community-based IK initiatives. ^{ccxxviii}	Waitangi claim 262 to traditional knowledge. ^{ccxxix}	Sami Rights Commission has so far not considered traditional knowledge its comanagement proposals. ^{ccxxx}	1980 amendments to the National Historic Preservation Act 1955 introduce notion of intangible cultural heritage. ^{ccxxxi}

Primary Sources

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4. Constitution of India.
5. Constitution of the Argentine Nation.
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7. Constitution of the Kingdom of Cambodia.
8. Constitution of the Kingdom of Thailand.
9. Constitution of the Republic of Indonesia.
10. Constitution of the Republic of Kazakhstan.
11. Constitution of the Republic of Turkey.
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END NOTES

ⁱ The choice of dimensions is a synthesis of those issues that have been at the core of national and international efforts to protect indigenous rights, as codified in ILO Convention 169 and the Draft United Nations Declaration on the Rights of Indigenous Peoples.

ⁱⁱ According to para. 1 of OD 4.20, the “directive describes Bank policies and processing procedures for projects that affect indigenous peoples. It sets out basic definitions, policy objectives, guidelines for the design and implementation of project provisions or components for indigenous peoples, and processing and documentation requirements.” These objectives represent a hybrid between a broad policy instrument and operational guidelines for Bank officials. This dual nature must be taken into account, when evaluating the directive’s overlap with national regulatory frameworks and policies.

ⁱⁱⁱ This definition includes those who retain some or all of their own social, economic and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains.

^{iv} Within China’s ethnic minority groups, there may be smaller communities such as hunter-gatherer bands, which approximate the definition of IP/tribals under international law (ILO 169). Chinese law does not single out such communities for special treatment, but only deals with them at the level of ethnic minorities. Furthermore, many individuals officially designated as ethnic minorities are effectively assimilated into the majority Han community, but retain their minority designation in order to avail of affirmative action policies in education, employment and family planning (minorities often have larger birth quotas).

^v People with very different adaptations to the environment and whose culture may vary in other significant ways have been lumped into the same group (e.g. the Co-Ho in Tay Nguyen, the San Chay in the northern uplands and the Chut on the central coast). Furthermore, ethnic minorities are *likely* to be – but not *necessarily* – vulnerable and disadvantaged in the development process. The ethnic Chinese seem to be an exception – they have better social indicators (higher life expectancy, lower infant mortality, lower crude death rate, greater awareness of family planning methods) than even the majority Kinh community.

^{vi} Rights over land are specified in s. 7 of the Indigenous Peoples Rights Act, 1997 and include, *inter alia*, the right to claim ownership over lands, the right to develop and manage lands and natural resources and share in profits derived from them, the right not to be removed except with prior informed consent, the right to be resettled in the event of unavoidable displacement, the right to regulate entry of migrants, the right to (re)claim portions of their ancestral domains/lands that have been reserved, unless reserved for a public purpose and the right to resolve land disputes in accordance with customary law.

^{vii} Only about 17 per cent of the 667 Orang Asli villages are gazetted as Orang Asli Areas or Reserves (Colin Nicholas, *The Orang Asli of Peninsular Malaysia* <<http://www.xlibris.de/magickriver/oa.htm>>).

^{viii} They can be asked to leave their lands by the government at any time. They have no right to compensation or resettlement (ss. 6(3), 7(3), 10(3), 12 Aboriginal Peoples Act).

^{ix} Native Customary Rights (NCR) of the natives of Sarawak over their Native Customary Land (NCL) are recognized and protected by the Sarawak Land Code cap. 81. The extent of the NCL of each longhouse community is defined by boundaries mutually agreed between that particular longhouse community and all the other longhouse communities surrounding it. These land boundaries are also recognized by the law and are officially recorded in the government Land Boundary Register kept at the District Offices. However, it

has been alleged that the Sarawak government issues licenses for logging over NCL for which natives have acquired NCR. NCR have also been extinguished by the establishment of Permanent Forest Estates, without compliance with the requirement of notice imposed by the Sarawak Forest Ordinance cap. 126. Protests against the infringement of NCR are allegedly met with repression (NETHERLANDS CENTER FOR INDIGENOUS PEOPLES, *Report on the Situation of the Forest People of Malaysia/Sarawak* <<http://forests.org/archive/indomalay/peforsar.htm>>).

^x Art. 7 of the Forestry Law of the People's Republic of China allows minorities in autonomous areas "greater decision-making power and economic benefit from forestry development, timber distribution and use of the forest fund" than it allows outside autonomous areas.

^{xi} Article 7 of the Grassland Law of the People's Republic of China provides that if grasslands in autonomous areas are to be requisitioned for state construction, due consideration shall be given to the interests of these areas and arrangements made for their economic development.

^{xii} In practice, most resource development projects are carried out with investments from the central government. Projects tend to utilize local resources, but because organs of self-government are not in control of the project, they make little contribution to local economic development (XUEJUN WANG, CHINA MINORITY PROFILES – LEGAL RESEARCH ON INDIGENOUS PEOPLE IN THE PEOPLE'S REPUBLIC OF CHINA [Peking University 1998]).

^{xiii} Article 33 of the Mineral Resources Law of the People's Republic of China provides that "In exploiting mineral resources in national autonomous areas, the state shall give due consideration to the interests of those areas and make arrangements favorable to the areas' economic development and to the production and livelihood of the people of local minority nationalities. The organs of self-government of national autonomous areas shall, in accordance with legal provisions and the unified state plan, have priority for rationally developing and utilizing the mineral resources that may be developed by local authorities." In practice, organs of self-government in autonomous areas have little control over and derive little benefit from mineral resource exploitation. Thus, while the Xinjiang autonomous region supplies much of China's oil and uranium, only 7% of oil revenues are currently returned to Xinjiang authorities (Stevan Harrell & Dru C. Gladney, *Background, Law, and Policy, in CHINA MINORITY PROFILES 11* [Halsey Beemer & Sandra Erb eds., World Bank 1997]).

^{xiv} This is a ministerial-level committee directly under the Office of the Prime Minister, responsible for monitoring and supervising implementation of all government programs regarding ethnic minorities.

^{xv} Under art. 4 of the Constitution, the National Assembly is the highest organ of state. Art. 94 provides that within the National Assembly, a Nationalities Council shall be elected. It studies and makes proposals to the National Assembly on issues concerning ethnic minorities, supervises and controls the implementation of policies affecting them, executes programs for the socio-economic development of the highlands and other regions inhabited by ethnic minorities, etc.

^{xvi} The organs of self-government of autonomous areas can: (i) enact regulations in light of the special characteristics of the area; (ii) modify or cease implementing decisions of a higher state organ if these do not suit conditions in the autonomous area, after receiving the approval of the state organ at the higher level; (iii) adapt or complement laws and regulations to suit local conditions; (iv) adopt affirmative action policies (give priority to minorities in recruitment of personnel, enterprises and institutions in autonomous areas); (v) organize local public security forces for maintenance of public order, subject to approval of the State Council; (vi) implement measures for controlling the transient population; (vii) implement measures for family planning that are appropriate to local conditions, etc. Organs of self-government are subject to the authority of the State Council, they may not violate the national unity provisions in the Constitution and all organs in all areas are under the leadership of the Communist Party (Stevan Harrell & Dru C. Gladney, *Background, Law, and Policy, in CHINA MINORITY PROFILES 7* [Halsey Beemer & Sandra Erb eds., World Bank 1997]).

^{xvii} The Chairman/Prefect/Head of the People's Government of an autonomous region/prefecture/county must belong to the ethnic minority for whom the autonomous area was established. Other leadership and administrative posts should be filled by members of that minority or other minorities living in the area, to the greatest extent possible. The Chair of an autonomous area's People's Congress must be a member of the minority or one of the minorities for whom the area is named and there must be quotas set aside in the People's Congress.

^{xviii} Autonomous regions have powers and jurisdiction over administrative organization, revenue, ancestral domain and natural resources, personal, family and property relations, regional urban and rural planning development, tourism, education, cultural heritage and eminent domain.

^{xix} The Regional Government is headed by a Regional Governor. S/he is assisted by a Cabinet of 9 members, of whom at least 4 must belong to indigenous cultural communities.

^{xx} In Muslim areas Shariah courts apply Shariah law, while in tribal areas tribal courts apply tribal codes.

^{xxi} The National Commission on Indigenous Peoples consists of 7 commissioners who must be IP. It is the primary government agency through which IP can seek government assistance, proposes relevant laws and policies, issues certificates of ancestral domain/land title, etc.

^{xxii} All revenues accruing to autonomous areas are independently managed and used by the organs of self-government. If revenue exceeds expenditure, a fixed amount of the surplus is given to the financial department at a higher level. If expenditure exceeds revenue, a subsidy is given to the autonomous area by the financial department at the higher level.

^{xxiii} Organs of self-government may independently determine economic development policies in light of local characteristics and needs (Law on Regional National Autonomy (LRNA), art. 26). They can arrange for local development projects independently according to their financial and material resources and special local conditions (LRNA, art. 29).

^{xxiv} With the approval of the State Council, organs of self-government in border autonomous areas may pursue foreign economic and trade activities, open foreign trading ports, etc. They are allowed to retain a higher proportion of foreign exchange than non-autonomous areas (50% since 1985).

^{xxv} Constitution, arts. 17 and 18. The state is enjoined that its management of land must guarantee that land use "shall conform to the set objectives and yield effective results". The state shall "entrust land to organizations and private individuals for stable and lasting use". Terms such as "set objectives", "effective results" and "stable and lasting use" threaten to undermine the rights of shifting cultivators. Land certificates are provided on the ground that land is used "properly". Land that is in fallow as a natural part of the swidden cycle may be considered "unused". For ethnic minority people who rely on swidden agriculture, this means that land might be taken from them in the future because some state bureaucrat decided that they have not used it "properly" (WINROCK INTERNATIONAL, ETHNIC MINORITIES IN VIETNAM – A COUNTRY PROFILE 37 (World Bank 1996)). Instruction 525/TT: Government Strategy for the Accelerated Development of Ethnic Minorities and Upland Areas also makes explicit the government determination to replace the subsistence economy with a commodity-based economy. There is also a Department of Fixed Cultivation and Permanent Settlement and Development of New Economic Zones, which seeks to bring about a change from subsistence production (through for example, swidden agriculture) to commodity production and attempts to relocate and concentrate populations in more accessible areas.

^{xxvi} Organs of self-government can establish schools at various levels, set curricula, determine languages to be used and enrollment procedures, establish specialized schools for vocational training, etc.

^{xxvii} Organs of self-government may take measures for the advancement of modern medicine as well as traditional healthcare systems.

^{xxviii} Instruction 525/TT: Government Strategy for the Accelerated Development of Ethnic Minorities and Upland Areas mandates the strengthening of the existing educational system and acknowledges the need to adjust education to suit local needs and conditions. It also speaks of developing infrastructure (road access to remote villages) and providing safe drinking water.

^{xxix} Under the Aboriginal Peoples Act, no Orang Asli child shall be precluded from attending any school only by reason of being Orang Asli. No Orang Asli child attending any school shall be obliged to attend any religious instruction without the prior consent of his/her parents or guardian.

^{xxx} State supervision is intended to implement laws and regulations regarding religious affairs; protect the rights of religious organizations; prevent the use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system; prevent foreign interference and domination and prevent interference with the administration of the state and judicial system. In addition, religious activities may not oppose the leader of the Communist Party or the socialist system.

^{xxxi} Document 19: The Basic Viewpoint and Policy on the Religious Question during Our Country's Socialist Period, 1982, s. 9, states that while Party members cannot be members of religious organizations or engage in religious practices, certain exceptions may be made in national minority areas where religion is part of ethnic identity. There, Party members may participate in traditional ceremonies and show respect to religious leaders, as long as they continue to work to "reform those customs and traditions which prove harmful to production or to the physical and mental health of the masses".

^{xxxii} Article 161(5) of the Constitution provides that in the states of Sabah and Sarawak, a native language "may be used in native courts or for any code of native law and custom" and in the case of Sarawak, "may be used by a member addressing the Legislative Assembly or any committee thereof".

^{xxxiii} Organs of self-government are encouraged to independently develop literature, art, the press, publishing, radio broadcasting, film, television, etc. in forms and characteristics unique to their respective minority cultures. They are also charged with protecting historical sites and cultural relics.

^{xxxiv} Rights of indigenous cultural communities to their traditional knowledge and practices are recognized. Bioprospecting activity is permitted in ancestral domains/lands only after the prior informed consent of IP is obtained in accordance with their customs and in a language understood by them. Royalties or some other form of compensation have to be negotiated for the commercial use of IP knowledge or resources. IP must be represented in the Inter-Agency Committee on Biological and Genetic Resources, the regulatory body that implements the guidelines.

^{xxxv} There are few IP-specific provisions on most subjects. Where constitutional rights are mentioned, these would presumably be guaranteed only to Thai citizens. 50-67% of hill tribal people do not have Thai citizenship.

^{xxxvi} Indigenous communities must register their juridical personality with the National Institute for Indigenous Affairs (INAI) in the Registro Nacional de Comunidades Indigenas (RENACI). They may then apply to the INAI for communal title to lands traditionally occupied by them. The national government is supposed to pay for surveying of the land as well as expropriation, where required. Indigenous communities that obtain land title in this manner are exempt from property taxes.

^{xxxvii} However, *Situation of Human Rights in Cambodia: Report of the Special Representative of the Secretary-General for Human Rights in Cambodia, Mr. Thomas Hammarberg*, Commission on Human Rights, 55th Sess., Provisional Agenda Item 19, U.N. DOC. E/CN.4/1999/101 (1999), notes that the draft land law does not adequately protect the rights of indigenous peoples.

^{xxxviii} John Dennis, *A Review of National Social Policies – Cambodia*
 <[http://www.mekonginfo.org/mrc_en/doclib.nsf/0/2A94925F72E170CBC725682E002A8D30/\\$FILE/FUL](http://www.mekonginfo.org/mrc_en/doclib.nsf/0/2A94925F72E170CBC725682E002A8D30/$FILE/FUL)

LTEXT.html>. Logging was banned by Royal Decree No. 1 on The Proper Management and Banning of Indiscriminate Use of Forest Resources, issued on 25 January 1999. A negative consequence of this ban has been the large number of people employed by the resource extraction industry who are now rendered jobless (*On the Edge of the Forest, By the Side of the Road* (The Socio-Cultural Vulnerability and Coping Strategies Research Project 2000)

<<http://www.bigpond.com.kh/users/ngoforum/scvcs/Report3/introduction.htm>>).

^{xxxix} Under the Local Government Act 1999, autonomous areas are obligated to protect natural resources, but have no control over their exploitation. They may retain 80% of income derived from forestry and fishing.

^{xl} Under the Local Government Act, autonomous areas are now entitled to 80% of revenues from mining, 15% of oil revenues and 30% of gas revenues.

^{xli} The major Government agencies dealing with hill tribe issues are (1) the National Security Council, responsible for overall national security and the hill tribes in this respect, as well as the Master Plan for the Development of Highland Communities; (2) the Center for the Coordination of Hill Tribe Affairs and Eradication of Narcotic Crops (COHAN), 3rd Army, responsible for overseeing and coordinating hill tribe development efforts in the northern region; (3) the Hill Tribes Welfare Division, Ministry of Interior, the lead agency concerned with both the welfare and development of tribal populations, which plays a much more active and direct development-oriented role than either the NSC or COHAN above; (4) the Tribal Research Institute, responsible for the study of tribal groups and provision of data to government and other agencies.

^{xlii} The government's policy of decentralizing local administration has seen the replacement of traditional village organizations made up of older community leaders by younger headmen selected by government agencies. This change has diminished the power of the elders and destroyed the old indigenous management practices (THE HUMAN RIGHTS COUNCIL OF AUSTRALIA, *The Hill Tribes of Northern Thailand: Development in Conflict with Human Rights – Report of a visit in September 1996* <<http://members.ozemail.com.au/~hrca/Tribes.htm>>).

^{xliii} Hill tribal people face a number of difficulties in obtaining citizenship. They may have to show Thai ancestry or prove residency (the latter is particularly difficult for those who lead a nomadic life). They must be able to speak Thai and be willing to change their last name to a Thai one (THE HUMAN RIGHTS COUNCIL OF AUSTRALIA, *The Hill Tribes of Northern Thailand: Development in Conflict with Human Rights – Report of a visit in September 1996* <<http://members.ozemail.com.au/~hrca/Tribes.htm>>).

^{xliv} Explanatory notes to the Local Government Act make clear that it should be implemented “along democratic lines; with community participation, equity and justice and taking into account the diversity and potentials of the regions”. It is also meant to “empower local communities and stimulate creativity” (Down to Earth, *Indonesian Local Autonomy Legislation* <<http://www.gn.apc.org/dte/CLALg.htm>>).

^{xlv} An Autonomous Area has authority over all aspects of government except foreign affairs, security, justice, monetary & fiscal policy and areas involving national/macro level policy plans and development controls: the budget, state administration, economic institutions, education & training, natural resource exploitation, strategic high technology, conservation & national standards (Local Government Act No. 22/1999, clause 7).

^{xlvi} Rosane F. Lacerda, *Human Rights of Indigenous Peoples in Brazil, 2000* <http://www.global.org.br/english/annual_report_documents/annual_report_indigenous_peoples_CIMI.htm>.

^{xlvii} Article 231(1) of the Brazilian Constitution defines lands traditionally occupied by Indians as “those on which they live on a permanent basis, those used for their productive activities, those which are indispensable to preserve the environmental resources required for their well being and those necessary for their physical and cultural reproduction, according to their customs and traditions”.

^{xlvi} Implementation of the land fund has enabled the National Corporation for Indigenous Peoples (CONADI) to transfer 75,000 hectares of land to Mapuche individuals and communities, as well as an important quantity of water rights to the Aymara in northern Chile (José Aylwin, *Indigenous Peoples Rights in Chile: Progresses and Contradictions in a Context of Economic Globalization* <<http://www.xs4all.nl/~rehue/art/ayl2.html>>).

^{xlix} In the Amazon region, 77.8% of the indigenous population has received legal recognition of their territories, in the Orinoco basin 85.6% have received recognition and in the Pacific Coast region, 63%. In these three regions, 84,115 persons from indigenous communities have received property titles to 18,724,540 hectares (*Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, 26 February 1999 <<http://www.cidh.oas.org/countryrep/Colom99en/chapter-10.htm>>).

^l The word ‘habitat’ was used intentionally to connote not only land, but also forests, mountains, waters, etc. (Jose Rafael Leal, *Venezuela’s New Constitution to confer Indigenous Rights* <<http://ens.lycos.com/ens/nov99/1999L-11-11-01.html>>).

^{li} Article 67 of the Brazilian Constitution requires the government to have completed the process of demarcation of Indian lands within 5 years of the promulgation of the Constitution (i.e. by 1993).

^{lii} Decree 1775/96 enables private individuals and local or state government officials to contest the creation or demarcation of indigenous areas by submitting evidence that repudiates the claim of prior occupancy by Indians, or attests to the rights of third parties over these lands. More than 545 claims to 45 indigenous territories were submitted under Decree 1775/96. 35% of all land that had been demarcated or was in the process of demarcation, thus became vulnerable to attack. FUNAI examined these claims by July 1996, determining that they related to 42 different indigenous areas and rejecting the majority of claims from non-IP. The Ministry of Justice accepted FUNAI’s recommendations on 34 of the 42 areas subject to claims and sent back for further analysis, those referring to eight areas (*Report on the Situation of Human Rights in Brazil*, OEA/Ser.L/V/II.97, Doc. 29 rev. 1, 29 September 1997 <<http://www.cidh.oas.org/countryrep/Brazil-eng/chaper%206%20.htm>>).

^{liii} Under Article 231(5) of the Brazilian Constitution, Indians can be removed from their lands by a resolution of Congress in the event of an epidemic or in the interests of national sovereignty.

^{liv} Article 330 states that exploitation of natural resources in indigenous territories should be done without impairing the cultural, social and economic integrity of indigenous communities and that the government must encourage the participation of IP representatives in decisions regarding such exploitation. Since 1987, indigenous inspectors of natural resources have been appointed in the resguardos, with the participation and agreement of each community.

^{lv} Indigenous peoples can enter into agreements with third persons regarding the exploration and exploitation of mineral resources; indigenous authorities have the right to indicate, within the indigenous mining zones, places that may not be subject to exploration or exploitation because of their social or religious significance (Decree 710 of 1990, art. 130).

^{lvi} The General Bureau of Indian Affairs of the Ministry of Government has overall responsibility for IP policies and programs. The Colombian Agrarian Reform Institute was established to regularize indigenous communities’ full ownership of their ancestral lands if they did not have legal title to those lands. The Ministry of Education is responsible for ensuring that IP receive culturally compatible education. The Ministry of Health is responsible for establishing health programs designed for indigenous people and for training indigenous health agents. The Indigenous Affairs Unit of the Office of the Attorney General ensures that public entities fulfill their responsibilities vis -à-vis indigenous peoples and that indigenous rights are guaranteed. The Public Defender’s Office monitors the official conduct of civil servants and endeavors to create tolerance and acceptance of diversity. The Colombian Anthropological Institute (ICAN) studies past and present indigenous cultures and coordinates its activities with the Aboriginal

Language Committee. The Regional Development Corporations are expected to promote indigenous communities' productive development. There are indigenous programs under the National Rehabilitation Plan and the Municipal Rehabilitation Councils and Committees of Traditional Authorities, especially in areas that were once embattled and are now being redeveloped. Finally, the Municipal Institutional Development Program trains administrators with the Indigenous Territorial Agencies. By decree 1396/1996, the Commission on Human Rights of the Indigenous Peoples was established (under the Ministry of Interior), with broad representation of State agencies and indigenous organizations. It has broad powers to ensure the protection and promotion of the human rights of indigenous communities and their members, particularly their rights to life, humane treatment and liberty. Decree 1397 of 1996 created the National Commission on Indigenous Territories (under the Ministry of Agriculture and Rural Development), primarily to "coordinate the programming of the annual actions of constituting, expanding, restructuring, and securing clear title to *resguardos*, and the conversion of indigenous reserves as required, based on the needs of the indigenous communities."

^{lvii} Under Article 176 of the Constitution, up to 5 seats in the lower chamber of the National Congress may be reserved for IP. In addition, 2 senatorial seats are reserved for IP.

^{lviii} At the local level, indigenous people serve on the municipal rehabilitation councils and the "indigenous town councils". Decree 2001 of 1988 recognized that the indigenous town councils were special public bodies charged with governing indigenous affairs and administering their territories.

^{lix} Article 55 of the Indigenous Act (Law No. 19,253 of 1993) states that "In order to prevent or terminate a lawsuit concerning land in which an indigenous person is involved, the parties concerned may voluntarily request the Corporation (CONADI) to instruct them about the nature of conciliation and their rights, and to arrive at an extra-judicial solution to the dispute. The conciliation procedure shall be completely informal." This clause enables the act of conciliation to take place within the indigenous community itself, without recourse to an urban court.

^{lx} Indigenous territories may have their own authorities to govern them; they may administer their own resources, levy taxes and share in the national revenues (article 287). The indigenous territories are to be governed by councils that, using their own customs and practices, shall be responsible for seeing that the laws are observed, for designing economic and social development policies, plans and programs within their territory, promoting and overseeing public investments, receiving and distributing revenues from those investments, overseeing natural resources, coordinating programs and projects, and helping to maintain law and order (Article 330).

^{lxi} The Colombian Constitutional Court has delivered a series of verdicts that define the limits of customary law. In decision T-254 (1994) the Court ruled that state courts should use the following criteria in determining the application of indigenous law: first, cultural traditions are to be respected depending on the evaluating court's judgment with respect to the extent to which those traditions have been preserved; second, the decisions and sanctions imposed by indigenous tribunals must not violate fundamental constitutional or international human rights; and third, indigenous customary law has supremacy over ordinary civil laws that conflict with cultural norms, and over legislation that does not protect a constitutional right of the same rank as the right to cultural and ethnic diversity. A 1996 decision extended the territorial scope of indigenous jurisdiction beyond indigenous territories in cases where a judge deems an indigenous defendant's level of cultural alienation to warrant it. A 1997 ruling (T-523) further expanded the scope of customary law when it allowed a Páez Indian community to use corporal punishment as a sanction, arguing that only a high degree of autonomy would ensure the survival of indigenous cultures (Donna Lee Van Cott, *Constitutional Reform and Ethnic Rights in Latin America* <<http://web.utk.edu/~dvancott/parlia.html>>).

^{lxii} Through Act 115 of 1996, the Ministry of Education developed a "National Ethnic Education Program", which establishes a framework for the teaching of languages and cultures of the various ethnic groups in their territories.

^{lxiii} Decree 2230/86 created the National Aboriginal Linguistic Committee, which advises the Government on developing policies on the native American languages within Colombian territory.

^{lxiv} As of 2000, 300 native communities were not recognized and did not have title. Approximately 3,431 peasant communities lacked support for their traditional lands and could not enter their titles in the public registries as they lacked the plans and/or descriptive documents required. In 1996, the Project for Regulating and Titling Lands was begun, under the PETT, or Special Project for Titling of Lands. The PETT is the state entity in charge of titling lands, but as of 2000 it was not granting property titles to native communities that applied for them, arguing that it did not have a sufficient budget to do so. Priority was being accorded to clearing up the status of the property of small farmers, and not of the peasant and native communities (*Second Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.106, Doc. 59 rev., 2 June 2000 <<http://www.cidh.oas.org/countryrep/Peru2000en/chapter10.htm>>).

^{lxv} On May 9, 1978, Law No. 22,175 entered into force; it established legal recognition and juridical personality for the native communities, guaranteeing them the right to property with respect to lands suitable for crops and/or stock-breeding, and set out the regime for the protection of territorial property as inalienable, non-attachable, and imprescribable.

^{lxvi} The inalienability of communal land is substantially eroded by the 1993 Constitution, article 89 of which speaks of the autonomy and liberty of the communities in the use “and free disposal of their lands”. Together with other legal provisions that apply to the agricultural sector, this allows for the possibility of establishing, on communal lands, the pledge of agricultural lands or the mortgaging of lands.

^{lxvii} Juridical personality of IP communities is recognized upon their formal registration with the state (Article 6, Title 1, Decree no. 24447 (1996)).

^{lxviii} Article 54, Code on the Environment (Legislative Decree No. 613 of September 7, 1990).

^{lxix} Article 88 of the Constitution states that “abandoned lands” (those that are distinguished precisely and intentionally when the communal question is addressed) “pass into the control of the State for adjudication by sale”. This poses a serious threat to the functioning of Andean communal technological and productive systems, which are based on the extensive use of land, temporary cultivation of crops, rotation followed by fallow or “rest” periods, which are mistaken for symptoms of abandonment.

^{lxx} The Agrarian Development Law entered into force in August 1994 and provides for the division or alienation of communally held indigenous land when two-thirds of the communal assembly so decides.

^{lxxi} There are approximately 25 oil exploration fields and numerous gold mining operations on indigenous lands in the Peruvian Amazon region (*Peru, in DEP’T ST. HUM. RTS. REP.* (2000) <<http://www.state.gov/g/drl/rls/hrrpt/2000/wha/index.cfm?docid=827>>).

^{lxxii} The National Human Rights Plan in Ecuador also speaks of a right to share in benefits and to be indemnified for damage caused to the environment.

^{lxxiii} National-level indigenous campesinos and labor organizations have the right to nominate jointly a list of Supreme Court nominees, from which the National Congress must choose one (there are a total of 9 judges).

^{lxxiv} On July 18, 1995, the Law on Private Investment in the Development of Economic Activities on the Lands of the National Territory and of the Peasant and Native Communities was approved. Article 10 of this law provides that “the peasant communities and native communities shall regulate their communal organization in accordance with the constitutional precepts and this law”, thereby effectively nullifying their autonomy in determining forms of communal organization.

^{lxxv} The National Human Rights Plan in Ecuador describes the autonomy of IP in terms of “ the exercise of their own forms of political, juridical, administrative, productive, economic, educational, religious, social, and cultural organization forms, as well as in health care and biodiversity management, and the right to be fully involved, through their representatives, in all State decision-taking bodies and institutions”.

^{lxxvi} According to the Bolivian Code of Penal Procedure, sanctions imposed by indigenous authorities must not violate constitutional or international law.

^{lxxvii} The Law of Popular Participation shifts federal budget money to municipalities and establishes a new system for participation in local development decisions. 20% of the state’s income must be redistributed to the municipalities. Of this amount, 15% can be used for administration and 85% must be spent on projects in the municipality. Indigenous groups are specifically named by the law as members of the vigilance committees which have veto power over municipal budgets.

^{lxxviii} These are the National Food Support Program, the Program for Repopulation and Development of Emergency Zones, and the Northeast Marañón Development Program.

^{lxxix} Pharmaceutical companies must earmark 0.5% of profits derived from IP knowledge or resources to the Indigenous People’s Development Fund, in addition to the price they agree to pay to use each product.

^{lxxx} Discontent amongst the indigenous peoples of Mexico attracted worldwide attention as a result of the 1994 Zapatista rebellion in Chiapas, which ceased upon the conclusion of the San Andrés Peace Accords between the Zapatistas and the Mexican government. The Law on Indigenous Rights and Culture was originally proposed by the congressional COCOPA (Commission on Concordance and Pacification) in 1996, as a way of implementing the San Andrés Accords. It was never submitted to the Congress by the then President Ernesto Zedillo. On assuming office, President Vicente Fox submitted the proposal to the Congress, which approved it in substantially modified form on 25 April 2001, followed by the House of Deputies on 27 April. The law is intended as a constitutional amendment. It has been rejected by many (including the Zapatistas and the National Indigenous Congress) as falling short of the promises of the San Andrés Accords.

^{lxxxi} The state of Oaxaca incorporated several new articles into its constitution in 1989 and passed the law on the Rights of the Indigenous Peoples and Communities of the State of Oaxaca in 1997. The states of Jalisco and Veracruz have also incorporated special provisions on IP in their constitutions.

^{lxxxii} As of 1998, the specific regulations necessary for the full enforcement of the autonomy law had not been passed.

^{lxxxiii} In May 1999, in a national referendum, voters rejected a package of 50 constitutional reforms approved by Congress in 1998, dealing a significant blow to the peace process. Only 20% of the electorate voted. The reforms would have incorporated many of the constitutional amendments mandated by the Accord on the Identity and Rights of Indigenous Peoples (AIDPI). The defeated amendments included provisions to recognize, respect and protect indigenous languages, law and traditional customs, professionalize the judicial service, give civilian courts jurisdiction over military personnel and define the army as an apolitical organization.

^{lxxxiv} On 30 November 1998, the National Congress approved an amendment to Article 107 of the Constitution, which has created great concern among indigenous groups, especially Garifunas, that their land will be taken away for tourism purposes. Article 107 provided that state-owned land within 40 km. of the border with neighboring countries or from the coast, could only be owned or acquired by Honduras - born people or societies formed by them, and the State. However, the amendment removes the prohibition in respect of non-Hondurans purchasing land for tourism projects. Garifunas were not consulted on this amendment as required by Article 6(a) of ILO Convention No. 169 and a May 1997 agreement between the government and indigenous peoples.

^{lxxxv} S. 36, Autonomy Law (1987).

^{lxxxvi} However, no legislation has been passed giving the Nicaraguan Institute of Agrarian Reform (INRA) specific authority to grant title to communal indigenous lands. Law No. 88 has, therefore, had little impact. As of 1990, INRA had not granted communal title in a single instance. On 13 October 1998, the President of the Republic presented to the National Assembly a Draft Organic Law to Regulate the Communal Property System of the Atlantic Coast and BOSAWAS Indigenous Communities. Critics of the draft law pointed to the lack of consultation with indigenous communities during the drafting process. They also suggested that far from being motivated by the plight of indigenous communities, this legislative initiative was spurred by a conditionality imposed by the World Bank in respect of the Atlantic Biodiversity Corridor Project that it was funding. Further, the law is considered integrationist because indigenous communities and regional authorities are virtually excluded from decision-making processes. INRA has total control in designing the law and is the mediator of all conflicts arising from it. The law does not define a process for granting communal title but merely establishes some principles, norms and procedures, thereby failing to plug a longstanding legislative vacuum (Amicus Curiae brief presented by Nicaraguan Indigenous Organizations, Communities and Representatives in the Mayagna (Sumo) Community of Awas Tingni Case, Inter-American Court of Human Rights, Case No. 11.555 <http://www.indianlaw.org/body_atieng.html>).

^{lxxxvii} The South Korean Sol del Caribe (SOLCARSA) logging company obtained a 30-year concession for forest exploitation on 62,000 hectares in the Bosawas reserve of the North Atlantic Region. This was approved by the (central) Executive power but not by the North Atlantic Autonomous Government. In February 1998, the Supreme Court declared the concession unconstitutional and ordered the President of the Republic to suspend the operations of the company.

^{lxxxviii} Over 1996 and 1997, the Honduras mining department issued mining concessions over 21,000 square miles (more than 30% of the country's territory) to foreign companies, mainly from the US, Canada and Australia. One of the first mining companies to take advantage of the favorable business climate in Honduras was Greenstone Resources Limited, which gained the mining concession for several hundred acres in Copán in western Honduras in the mid-90s, and promptly moved to evict the local residents. Its tactics allegedly included shutting off water to the community and intentionally running over one resident with a bulldozer. The residents of San Andrés Minas succumbed; four years later they still did not have legal title to the new lands promised to them. A second company, Entre Mares, faces civil and criminal charges for usurping water from nearby communities and for cutting down a forest without permission. (Michael Marsh, *Honduras is Worth More Than Gold* <<http://www.probeinternational.org/pi/mining/index.cfm?DSP=content&ContentID=1781>>)

^{lxxxix} The two autonomous regions created are the RAAS (Autonomous Region of the South Atlantic) and the RAAN (Autonomous Region of the North Atlantic).

^{xc} These are the Commission for the Officialisation of Indigenous Languages, the Commission on Sacred Places, the Commission on Reform and Participation, the Commission on Communal Lands and the Commission on Educational Reform. The latter three commissions must have equal government and indigenous representation. All commissions will make recommendations to Congress on legislative reforms, functioning, in effect, as parliamentary sub-committees.

^{xci} This is problematic for IP communities that straddle two or more states. The Huichol indigenous population, for example, inhabits the border between Jalisco and Nayarit states. The same community would therefore be regulated by different state laws, leading to inequality.

^{xcii} Article 115 of the Constitution states that “Indigenous communities, within the municipal level, can coordinate and organize themselves in the terms and for the effects established by the law”.

^{xciii} This is subject to the requirement that women are guaranteed the right to participate on an equal footing with men and that internal government “respects the federal pact and the sovereignty of the states”. In the

state of Oaxaca, 70% of the 570 municipalities are governed according to the indigenous regime of usages and customs. These communities apply traditional practices to resolve disputes, including allegations of crimes, and to elect local officials. In 1998 Quintana Roo's state Legislature passed a similar usages and customs law. While the laws allow communities in these states to elect officials according to their traditions, these usages and customs tend to exclude women from the political process (*Mexico, in DEP'T ST. HUM. RTS. REP.* (2000) <<http://www.state.gov/g/drl/rls/hrrpt/2000/wha/index.cfm?docid=810>>).

^{xciv} The application of IP law is subject to the "general principles of [the] Constitution, respecting individual guarantees, human rights, and...the dignity and integrity of women". Article 18 provides that indigenous persons convicted of crimes "...shall be able to serve their terms in the prisons closest to their homes, in order to give rise to their reintegration into the community as a form of their social rehabilitation".

^{xcv} The Regional Councils are composed of 45 universally elected members (elected every 4 years) representing all the ethnic communities of the area and, additionally, the representatives of that autonomous area to the National Assembly. The Regional Council of the RAAN, for example, consists of 2 Creoles, 18 Mestizos, 3 Sumos and 22 Miskitu-nani.

^{xcvi} Communities of the Atlantic Coast are to administer their own health, education, culture, transportation, supply and communal programs, among others, in coordination with the respective ministries. They may take measures to ensure the rational use of waters, woodlands and lands to protect their ecological balance. They are in charge of promoting and developing their traditional cultures throughout the area, including the promotion and development of Aboriginal traditional medicine as well as their traditional commerce with Caribbean nations according to the national laws and proceedings ruling in this matter. They may also establish regional taxation.

^{xcvii} The application of customary norms is subject to the requirement that they are not incompatible with the fundamental rights defined by the national legal system or with internationally recognized human rights.

^{xcviii} Under Article 2(B)(7), the government is required to "support the productive activities and the sustainable development of indigenous communities through actions that permit them to achieve sufficiency in their economic earnings, the application of stimuli for public and private investment that will encourage the creation of jobs, the incorporation of technology to increase their productive capacity, as well as to assure the equitable access to systems of supply and markets".

^{xcix} In June 1993, the National Assembly approved the Official Use of Community Languages Law.

^c The 1999 Federal Law On the Guarantees of the Rights of Small Indigenous Peoples also covers those non-Native people who live a traditional lifestyle on traditional Native lands (Article 3). The issue of whether semi-urban indigenous peoples satisfy the four criteria and can claim the benefits of the law is hotly debated. (Emma Wilson, *Conflict of Compromise? Traditional natural resource use and oil exploitation in northeastern Sakhalin/Noglikskii district* <<http://src-h.slav.hokudai.ac.jp/sakhalin/eng/71/wilson.html>>)

^{ci} Article 69 of the Constitution safeguards the rights of small indigenous peoples in accordance with the generally accepted principles and norms of international law and international treaties signed by the Russian Federation.

^{cii} These are the 1999 *Federal Law On the Guarantees of the Rights of Small Indigenous Peoples*, the 2000 *Law on General Principles of Organization of Communities of Small Indigenous Peoples of the North, Siberia and Far East of the Russian Federation* and the 2001 *Law on Territories of Traditional Nature Use by Small Indigenous Peoples of the North, Siberia and Far East of the Russian Federation*.

^{ciii} Law 16 of 1953 created the District of San Blas (Kuna Yala). By virtue of this law the State recognizes the existence of the General Kuna Congress (Article 13). Law 22 of 1983, which created the Embera District of Darien, recognizes the traditional institution of the Embera-Wounnan People.

^{civ} Private property rights are recognized only if they were registered at the time the laws creating the *comarcas* were enacted.

^{cv} Law 16 of 1953 (which created the District of San Blas) does not permit the adjudication of lands situated within indigenous reserves to people who are not part of the community “unless a solicitation for adjudication is approved by two different Kuna Congresses” (Article 21).

^{cvi} Article 44, Law 1 of 1994: “The permits and concessions of approval for logging in indigenous districts, reserves or communities will be authorized by the National Institute of Natural Renewable Resources in conjunction with the respective indigenous congresses, with a previous study of a scientific management plan.”

^{cvii} Article 47 of the Fundamental Law of the Kuna Yala District (has been submitted to the Legislative Assembly). Furthermore, participation of the General Kuna Congress would be required in the environmental impact assessment (EIA).

^{cviii} Article 23, Law 16 of 1953. The General Kuna Congress has presented the Fundamental Law of the Kuna Yala District (which contains proposals to amend Law 16) to the Legislative Assembly. Article 48 of this Fundamental Law gives the General Congress the power of approval over mining activities in the district.

^{cix} Article 20, Law 22 of 1983. However, this law does not give the Embera-Wounnan people rights of participation in design or approval.

^{cx} Article 28 of the Land Code (1991).

^{cxii} Despite autonomous *comarca* status, public spending and revenue collection remain under the control of the Panamanian central government, which must guarantee necessary allocations for administration, investment and integrated development of the *comarca* in each year’s annual budget. Funds are channeled via state institutions with the collaboration of the self-governing institutions of the *comarcas* (the General, Regional and Local Congresses) according to plans and programs elaborated by government agencies in coordination with indigenous authorities.

^{cxiii} The Kuna Indian *Comarca* of San Blas (Art. 141(2)) and a new *Comarca* for the Guaymí Indians (Art. 321(1)) elect representatives to the National Assembly.

^{cxiiii} Under article 133 of the Constitution, it is illegal to form political parties around “race, sex or religion”. This appears to preclude the creation of indigenous political parties, as have been created in Colombia and Ecuador.

^{cxv} In 1998 Russia’s Ministry of Education elaborated the Concept of Reforming the System of Pre-School and General Secondary Education and Training of Personnel from among the Indigenous Small Peoples of the North. The Concept was approved by the Government of the Russian Federation. Its implementation is carried out in cooperation with the Ministry for Federation and Nationalities, Ministry of Culture and specialized committees of the State Duma and the Federation Council. Thus, a State Polar Academy has been set up in St. Petersburg with a view to educating the indigenous small peoples of the North. Although development of educational programs and textbooks, teacher training, etc. are normally the responsibility of the federal units (i.e. states), where Small Peoples of the North are concerned, these issues fall within the competence of the federal authorities. (*Report submitted by the Russian Federation Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities* (Submitted to the

Council of Europe, March 2000)

<<http://www.humanrights.coe.int/Minorities/Eng/FrameworkConvention/StateReports/Toc.htm>>.)

^{cxv} The Russian Federation Federal Law on Fundamentals of the Russian Federation Legislation on Culture of 9 October 1992 guarantees the right of peoples and other ethnic entities to preservation and development of their cultural and ethnic identity, protection, reconstruction and maintenance of native historical and cultural environment. All ethnic communities living as *communities* outside their states or having no state of their own are guaranteed the right to cultural and national autonomy (Article 21).

^{cxvi} Indeed, the Turkish government does not even acknowledge the Kurds as a distinct minority group. Thus, the Turkish Foreign Ministry website states: “The status of minorities in Turkey has been internationally certified by the 1923 Treaty of Lausanne, according to which there are only non-Muslim minorities in Turkey. It is wrong, according to this definition, to refer to our citizens of Kurdish descent as a “Kurdish minority”. Besides, Turkey is a unitary state and “Turkish citizenship” is an all-embracing juridical concept encompassing all our citizens, granting them equal rights and obligations. According to this definition, “Turkishness” is a legal status binding all its citizens to the Turkish state. Thus, “constitutional citizenship” is one of the most basic principles upon which the Turkish Republic is founded. All constitutions of the Turkish Republic to date have envisaged equal rights and opportunities for and have ruled out discrimination among Turkish citizens.” (See <<http://www.mfa.gov.tr/grupa/ac/acl/faq.htm#bm1>>)

^{cxvii} Kurds have inhabited the south-east of Turkey for more than two thousand years, well before the arrival of the first Turkic tribes in the tenth century. For those living in their traditional settlement areas in the mountainous south-east, clan and tribal values, affiliations and loyalties are still predominant. They speak Kurdish as their native language. They are economically and socially disadvantaged with all relevant indicators clearly lagging behind those of the Turkish majority. Kurds are severely discriminated against by the Turkish government; their language is forbidden in virtually every public forum and their organizations are illegal. Even the term “Kurd” is not officially used in Turkey - instead Kurds are referred to as mountain Turks or Turkish highlanders. Until the fall of the Ottoman Empire in the 1920s, the Kurdish tribes enjoyed virtual autonomy, mostly due to the remoteness of their areas. Kurdish activists have long fought for a nation-state of their own and still pursue at least regional autonomy. However, Kurds do not seem to consider themselves IP and receive comparatively limited coverage in IP advocacy circles and publications (though the Kurdish issue is well represented by human rights organizations). The main reason may be the sheer size of the Kurdish ethnic group in the region (including the large Kurdish populations of Iran and Iraq it numbers over 22 million) and the peculiar historical circumstances that led to the Kurds being denied a state of their own - the understanding seems to be that Kurds are a nation without a state rather than IP.

^{cxviii} ROSS MALLICK, *DEVELOPMENT, ETHNICITY & HUMAN RIGHTS IN SOUTH ASIA* (Sage Publications 1998).

^{cxix} As enumerated by the recently concluded “People of India Project”, conducted by the Anthropological Survey of India (Deepak Kumar Behera, “*So-Called Development and its impact on the Human Rights of Indigenous People in India*, in *HUMAN RIGHTS OF INDIGENOUS PEOPLES* 109 [Cynthia Price Cohen ed., Transnational Publishers 1998]).

^{cxx} Sher Alam Shinwari, *So near, yet so far away* <<http://www.dawn.com/report/islamabad/nwfp5.htm>>.

^{cxxi} These are the Utman Khel, Tarkan, Mohmand, Safi, Afridi, Orakzai, Turi, Bangash, Dawar, Shelmani, Shinwari, Mulagori, Parachinar, Masozai, Saidgai, Mehsud, Waziris, Bhattani Kharasin, Gurbaz, Ustrana, Utmanzai, Ahmadzai and Shirani.

^{cxxii} *Racial Discrimination towards the Indigenous Peoples in Nepal* (non-governmental report for the Third World Conference Against Racism 2001, presented at the National Conference of the National Preparatory Committee, Katmandu, 26 April 2001) <<http://www.mtnforum.org/resources/library/lawom01a.htm>>. It

has been alleged that the 1991 census underestimated the number of IP. The census recorded only 26 of the 61 nationalities communities separately and lumped the remaining small communities in the “other” category. The largest group (Magar) constitutes 7.2% of the total population. Some of the nationalities groups are very small and those such as the Kusundas, Hayus, Bankariyas, Surels and Chhairotans are on the verge of extinction. Even the official list of 61 nationalities communities is not considered definitive because it does not recognize smaller linguistic communities found within the recognized groups. For instance, there are more than 30 linguistic groups within the Rai community.

^{cxxiii} According to Article 244 of the Indian Constitution, Schedule VI applies to the administration of the tribal areas in the states of Assam, Meghalaya, Tripura and Mizoram, while Schedule V applies to the administration and control of all other Scheduled Areas and Scheduled Tribes in the country.

^{cxxiv} These include the Protection of Civil Rights Act, 1955, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

^{cxxv} If there are different scheduled tribes in an autonomous district, the area or areas inhabited by them may be divided into autonomous regions (para. 1(2), Schedule VI, Constitution of India).

^{cxxvi} The Inner Line Permit is a regulation which prohibits the entry of outsiders (non-natives) into certain areas of the northeast in Arunachal Pradesh, Nagaland and Mizoram without a permit. Non-natives may not acquire an interest in land or produce of the land in areas covered by the Permit unless sanctioned by the Lieutenant-Governor.

^{cxxvii} *Indigenous People and their relationship to land: Second Progress Report of the Special Rapporteur, Mrs. Erica-Irene A. Daes* (Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 51st Sess., Provisional Agenda item 7, E/CN.4/Sub.2/1999/18, 3 June 1999).

^{cxxviii} Under para. 3, Schedule VI of the Indian Constitution, the District/Regional Councils have power to make laws with respect to the allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town.

^{cxxix} Under para. 3, Schedule VI of the Indian Constitution, the District/Regional Councils have power to make laws with respect to the management of any forest not being a reserved forest, the use of any canal or water-course for the purpose of agriculture and the regulation of the practice of *jhum* or other forms of shifting cultivation.

^{cxx} Nepal’s forest policy has evolved gradually to give local communities a greater role in forest management. The first amendment to the Forest Act in 1978 proposed the involvement of local communities in the conservation, management and development of forests. The second amendment in 1982 legalized the removal of natural forest produce from parks and reserves (local communities had been deprived of their customary right to collect forest produce as a result of the 1957 Private Forest Nationalization Act as well as successive administrative measures creating wildlife parks and reserves). The establishment of the Annapurna Conservation Area (ACA) in 1986 was another step forward in more participatory forest management. Under the ACA model, forests are divided into multipurpose community use, sanctuary and restoration zones. Local people are involved in planning as well as management. The success of this model led to a third amendment, which allowed other conservation areas to be established on the same lines. Pursuant to this amendment, the Makalu Barun National Park and Conservation Area (MBNPACA) was established in 1992. User-groups committees have been formed in the MBNPACA in recent years to reactivate indigenous management systems. A fourth amendment in 1993 permits management of buffer zones around traditional parks and reserves by local people, who are granted rights to use forest produce on a regular basis. 30-50% of income earned from protected areas is to be spent on community development works designed in consultation with local agencies and communities. (Jai N. Mehta,

Biodiversity, Protected Areas and Property Rights Issues in Nepal: A Historical Perspective
<<http://www.geocities.com/jaimehta223/article4.html>>).

^{cxxxi} The National Commission for Scheduled Castes and Scheduled Tribes is a body set up pursuant to Article 338 of the Indian constitution. It has been entrusted with the responsibility of ensuring that the safeguards and protections that have been given to scheduled castes and tribes are implemented. As part of the National Commission, the Commission on Atrocities Against Scheduled Castes and Scheduled Tribes oversees implementation of the Prevention of Atrocities Act, 1989, and the Protection of Civil Rights Act, 1955, though it does not have a statutory responsibility to do so. The commission both receives complaints and proactively investigates matters that come to its attention through news reports or by any other means. Under the constitution the commission has the powers of a civil court and can call on anyone for evidence to ensure that the laws are being implemented. The commission lacks the powers of a criminal court, however, and therefore cannot enforce its findings.

^{cxxxii} According to article 9(4)(a) of the Constitution of Nepal, a foreigner can acquire Nepali citizenship if s/he knows the Khas-Nepali language written in Devanagari script. Knowledge of the other native languages spoken in Nepal is not considered sufficient. Article 8 of the Constitution limits citizenship by birth to the year 1962. This means that people who were born prior to this but had not taken citizenship at the time are denied citizenship. The high-level citizenship committee constituted under parliamentarian Dhanpati Upadhaya estimated that 3,400,000 Nepalis above the age of 16 were without citizenship. Landless and nomadic indigenous peoples constitute a high proportion of these people; their nomadic lifestyles made it particularly difficult for them and their ancestors to register themselves as citizens at the relevant time. (*Racial Discrimination towards the Indigenous Peoples in Nepal* (non-governmental report for the Third World Conference Against Racism 2001, presented at the National Conference of the National Preparatory Committee, Katmandu, 26 April 2001)
<<http://www.mtnforum.org/resources/library/lawom01a.htm>>).

^{cxxxiii} In addition to their powers to legislate on land and natural resource use, the District/Regional Councils have power to make laws with respect to the establishment of village or town committees or councils and their powers, any other matter relating to village or town administration, including village or town police and public health and sanitation, the appointment or succession of Chiefs or Headmen, the inheritance of property, marriage and divorce and social customs (para. 3, Schedule VI of the Indian Constitution). The North Cachar Hills Autonomous Council and the Karbi Anglong Autonomous Council have even more extensive legislative powers specified in para. 3-A, Schedule VI of the Indian Constitution.

^{cxxxiv} Executive powers of the District/Regional Councils include the power to assess and collect land revenue, levy and collect taxes on lands and buildings and tolls on persons resident within such areas, etc. (para. 8, Schedule VI of the Indian Constitution)

^{cxxxv} The District/Regional Councils may constitute village councils or courts for the trial of suits and cases where all parties are STs indigenous to the area. The District/Regional Councils shall act as courts of appeal in respect of such suits and cases (para. 4, Schedule VI of the Indian Constitution).

^{cxxxvi} According to para. 4(1), Schedule V of the Indian Constitution, the Tribes Advisory Council (TAC) consists of not more than 20 members, 75% of whom must be representatives of STs in the state legislative assembly. If the number of representatives of STs in the state legislative assembly is less than the number of seats in the TAC to be filled by such representatives, the remaining seats must be filled by other members of the relevant tribes. The TAC plays an advisory role to the Governor advising, *inter alia*, on the use of his/her power to (a) prohibit or restrict the transfer of land by or among STs in Scheduled Areas; (b) regulate the allotment of land to STs in such areas; (c) regulate money-lending in such areas.

^{cxxxvii} Under article 247(3) of the Constitution of Pakistan, acts of Parliament do not apply to Federally Administered Tribal Areas unless the President so directs and acts of Provincial Assemblies do not apply to Provincially Administered Tribal Areas unless the Governor of the Province so directs. Under article

247(7), neither the Supreme Court nor a High Court can exercise jurisdiction over a tribal area unless Parliament by law otherwise provides.

^{cxviii} There are a total of 3,616 Maliks and 3,441 Lungi Holders in FATA and the four Frontier Regions. A Malik/Lungi Holder is recognised by the government as a person commanding most authority and influence in his tribe, and is responsible for the maintenance of his respective area (Sher Alam Shinwari, *So near, yet so far away* <<http://www.dawn.com/report/islamabad/nwfp5.htm>>).

^{cxix} The following is excerpted from Mumtaz Bangash, *Speedy justice of the elders* <<http://www.dawn.com/report/islamabad/nwfp6.htm>>. The *jirga* is a customary judicial institution, particularly common among the Pakhtoons. It is used to try major and minor crimes and civil disputes, as well as to resolve conflicts and disputes between individuals, groups and tribes. Discourses in the *jirga* are also an effective way to socialize children regarding the meaning of the *Paktoonwali*, the all-encompassing code of conduct for the Pakhtoons. Besides settling inter-tribal disputes, the *jirga* is also used to conduct the tribes' relations with the outside world. The British concluded written treaties with *jirgas*, guaranteeing non-interference in tribal affairs so long as the *jirgas* recognized their suzerainty. The Government of Pakistan honors these treaties and has entered into similar arrangements of its own. Thus, the *jirga* is a formally recognized institution in the tribal areas of Pakistan. Under the Frontier Crimes Regulation (FCR) 1901, a magistrate, political agent or his/her assistant can designate a group of elders to try a criminal or civil case. The FCR authorizes settlement of quarrels arising out of blood feuds relating to *zan, zar, zamin* (women, wealth and land) and all other questions affecting the Pakhtoon honor and way of life by such *jirgas* (known as *sarkari jirgas*). This *jirga* can inflict a maximum penalty of imprisonment for up to 14 years. Traditionally, the *jirga* determines the punishment to be inflicted on the basis of *nurkh* (tribal rule or precedent). Non-compliance with *jirga* decisions may incur sanctions such as excommunication, confiscation of weapons, fines, burning down of the non-complying party's house, etc.; in the event of continuing non-compliance, the party loses the security promised by the *jirga* and may be killed. Collective decisions of *qaumi* or *ulusi jirgas* are carried out by a council of tribesmen, called by different names in different areas: *salwaikhtae* in Waziristan, *lashkar* in Afridwala and *rapakian* in Kurram. (The *jirga* has been criticized by many international human rights organizations including Amnesty International, for legitimizing or ordering honor killings of women.)

^{cx} However, the Shiv Sena Nepal Party (a rightwing extremist Hindu party) was registered in 1999, in what would appear to be a violation of this provision.

^{cxli} The Plan envisages the formation of a *Janajati* Council and district-level committees which would identify developmental programs to be undertaken. However, the Council has not yet been established; consequently no programs have been drawn up. Programs conducted through the Rastriya Janajati Vikash Samiti (Nationalities Development Committee) are severely constrained by its limited mandate and meager budget. In the three years since its inception, it has spent \$215,000. If these funds were to be distributed amongst IP/nationalities/minority linguistic groups, after deducting administrative expenses each would receive around \$1500. (*Racial Discrimination towards the Indigenous Peoples in Nepal* (non-governmental report for the Third World Conference Against Racism 2001, presented at the National Conference of the National Preparatory Committee, Katmandu, 26 April 2001) <<http://www.mtnforum.org/resources/library/lawom01a.htm>>).

^{cxlii} They may establish, construct or manage primary schools and in particular, may prescribe the language and the manner in which primary education shall be imparted (para. 6, Schedule VI of the Indian Constitution).

^{cxliii} Sher Alam Shinwari, *So near, yet so far away* <<http://www.dawn.com/report/islamabad/nwfp5.htm>>.

^{cxliv} The 1994 Law on the Television and Radio Organizations and their Broadcasts mandates the exclusive use of Turkish except in certain circumstances. Article 4(t) states: "Radio and television broadcasts will be made in Turkish; however, for the purpose of teaching or of imparting news, those foreign languages that have made a contribution to the development of universal cultural and scientific works can be used." On

the basis of this law, licences are not being issued for television or radio channels to broadcast in Kurdish (Human Rights Watch, *Turkey: Human Rights and the European Union Accession Partnership* <<http://www.hrw.org/reports/2000/turkey2/index.htm#TopOfPage>>).

^{cxlv} Turkish is the official (though not exclusive) language of instruction, according to Article 42(9) of the Constitution. The 1983 Foreign Language Education and Teaching Law regulates the teaching of foreign languages “taking into consideration the view of the National Security Council”. In short, the National Security Council decides which foreign languages may be taught in Turkey. English, French, German, Russian, Italian, Spanish, Arabic, Japanese and Chinese may be taught, but Laz, Kurdish and Roma may not. When the Istanbul-based Kurdish Culture and Research Foundation (Kurt-Kav) attempted to open a private course to teach Kurdish, the course was closed down in 1998. The foundation’s board members were prosecuted in the Istanbul State Security Court for “incitement to hatred” under Article 312, but they were acquitted in early 2000 (Human Rights Watch, *Turkey: Human Rights and the European Union Accession Partnership* <<http://www.hrw.org/reports/2000/turkey2/index.htm#TopOfPage>>).

^{cxlvi} Section 36(iv) provides for protection of knowledge of local people relating to biodiversity through measures such as registration of such knowledge and development of a *sui generis* system. Ss. 19 and 21 require approval of the National Biodiversity Authority (NBA) before biological resources and associated knowledge are accessed in order to ensure equitable sharing of benefits arising out of the use of such resources/knowledge. While granting approval, NBA will impose terms and conditions that secure equitable sharing of benefits. S. 6 requires persons seeking intellectual property rights to research based upon biological resources or knowledge obtained from India, to obtain prior approval of the NBA. The NBA will impose benefit-sharing conditions. S. 18(iv) stipulates that one of the functions of NBA is to take measures to oppose the grant of IPRs in any country outside India on any biological resource obtained from India or on knowledge associated with such biological resource.

^{cxlvii} The grounds for rejection of a patent application as well as revocation of a patent now include non-disclosure or wrongful disclosure of the source of a biological resource or knowledge relating thereto, in the patent application, and anticipation of knowledge, oral or otherwise. It has been made incumbent upon patent applicants to disclose the source of any biological resources used in their inventions in the patent application.

^{cxlviii} According to *Tunisia*, in DEP’T ST. HUM. RTS. REP. (2000) <<http://www.state.gov/g/drl/rls/hrrpt/2000/nea/index.cfm?docid=821>>. *Tunisia*, in WORLD DIRECTORY OF MINORITIES (Minority Rights Group International 1997) speaks of 450,000 Berbers constituting 5% of the total population in 1994. Lisa Anderson, *North Africa: Changes and Challenges* <<http://www.igc.org/dissent/archive/summer96/anderson.html>>, mentions an even lower figure (100,000 or 1.25% of the total population) and states that “apart from small ethnographic curiosities like the archaic villages of the South, they are almost completely assimilated.”

^{cxlix} *Tunisia*, in ETHNOLOGUE: LANGUAGES OF THE WORLD (Barbara F. Grimes ed., Summer Institute of Linguistics, Inc. 2000). K. Tissas, *Truly Indigenous: The Berbers of North Africa*, 2 INDIGENOUS AFFAIRS (1993), speaks of mere “relics of Berber culture in Tunisia.”

^{cl} *Tunisia*, in DEP’T ST. HUM. RTS. REP. (2000) <<http://www.state.gov/g/drl/rls/hrrpt/2000/nea/index.cfm?docid=821>>.

^{cli} K. Tissas, *Truly Indigenous: The Berbers of North Africa*, 2 INDIGENOUS AFFAIRS (1993); *Morocco*, in WORLD DIRECTORY OF MINORITIES (Minority Rights Group International 1997); *Minorities at Risk Project of University of Maryland at College Park* <<http://www.bsos.umd.edu/cidcm/mar/tableme.html>>.

^{clii} *Morocco*, in DEP’T ST. HUM. RTS. REP. (2000) <<http://www.humanrights-usa.net/reports/morocco.html>>.

^{cliii} *Cote d'Ivoire*, in DEP'T ST. HUM. RTS. REP. (2000)

<<http://www.state.gov/g/drl/rls/hrrpt/2000/af/index.cfm?docid=773>>. The Akan are located in the eastern and central portions of the country, the Krou in the southwest, the Southern Mande in the west, the Northern Mande in the northwest and the Senoufo/Lobi in the north-center and northeast. The Baoules in the Akan division, who probably comprise the single largest subgroup with 15% -20% of the total population, are based in the central region around Bouake and Yamoussoukro.

^{cliv} Based on information provided by Panel of Expert review.

^{clv} JULIAN BURGER, THE GAIA ATLAS OF FIRST PEOPLES 118-119 (Gaia Books Ltd. 1990).

^{clvi} Borges, Phil. "Cultures on the Edge: At

<http://www.culturesontheedge.com/gallery/archives/phil_borges/> (Viewed April 30, 2002)

^{clvii} At a 1985 session of the UN Working Group on Indigenous Populations, a representative of the Moroccan government made it very clear that the government did not recognize the presence of indigenous peoples in the country. He said: "The fact that certain areas of the country have particular traditions, their own dialects and a provincial way of life in no way bears upon their enjoyment of rights and religious practices." All citizens had equal rights in matters of family and inheritance, civil and commercial affairs, real estate and administrative matters. The division of the country into administrative areas or provinces did not in any way reflect the ethnic composition. Finally, there had been a great deal of intermingling (between different communities) through marriage and migration. (United Nations Working Group on Indigenous Populations, 29 July – 2 August 1985, E/CN.4/Sub.2/AC.4/1985/WP.1/Add.1)

Lisa Anderson, *North Africa: Changes and Challenges*

<<http://www.igc.org/dissent/archive/summer96/anderson.html>>, writes, however, that the rights of Jews have historically been protected in both Tunisia and Morocco. Upon independence, both Tunisia and Morocco declared that the Jews would be protected as national minorities. They permitted the dwindling Jewish communities to retain property, hold religious services, and reside as full citizens in their countries, and the Moroccan king repeatedly invited Jewish emigrants to return to Morocco. In part this was because the Jewish minority was relatively prosperous, well-educated and better connected to the rest of the world and was therefore perceived as being a valuable asset in building the new postcolonial state.

^{clviii} It should be noted that in the Ethiopian context, numerical minorities are not necessarily political minorities. Thus, despite being numerical minorities, the Amhara and Tigrayan groups have wielded considerable political power and influence. In such a situation, ethnic majorities such as the Oromo are more vulnerable.

^{clix} Nick Pelham, Moroccan King Commits to School and University Education in Berber

<<http://www.ogmios.org/144.htm>>.

^{clx} A single seat in the House of Representatives represents an electoral constituency of roughly 100,000 people. In this sense, the constitution implicitly defines "minorities" as those groups whose population is less than 100,000. Apart from this, the Constitution does not clarify which groups are minorities or how minority status should be determined. (Aklilu Abraham, *Federalism, State Structuring and Rights of Ethnic Minority Groups in Ethiopia*, in AFRICAN POLITICS IN THE NEW MILLENNIUM: FACING THE CHALLENGES (Proceedings of the AAPS 13th Biennial Congress, Yaounde, Cameroon, April 2001)

<<http://www.aaps.co.zw/Publications/AIJP/Aklilu.html>>)

^{clxi} Under article 39(4) of the Constitution of Ethiopia, "the right to self-determination, including secession, of every Nation, Nationality and People shall come into effect:

- (a) When a demand for secession has been approved by a two-thirds majority of the members of the Legislative Council of the Nation, Nationality or People concerned;
- (b) When the Federal Government has organized a referendum which must take place within three years from the time it received the concerned council's decision for secession;
- (c) When the demand for secession is supported by majority vote in the referendum;

- (d) When the Federal Government will have transferred its powers to the council of the Nation, Nationality or People who has voted to secede; and
- (e) When the division of assets is effected in a manner prescribed by law.

^{clxii} A 1994 report (Amin Kazak, *The Berber Tamazight Movement in Morocco and Algeria*, 4(1-2) *FOURTH WORLD BULLETIN* (1994-95)) provides much evidence of this: “Although the publication of some newspapers in the Berber language is allowed, editors are often subjected to interrogation by state officials. In March 1994, the Ilmas Cultural Association was prevented from holding a conference on Berber language and writing. Similarly, in April 1994 the Moroccan Association for Research and Cultural Exchange was refused permission to organize a special day for Berber theater in the city of Rabat...On 1 May 1994, [several Berber activists] were arrested in Er Rachidia after participating in peaceful Labor Day demonstrations. Even though the demonstrations had been authorized by the appropriate officials and the slogans were familiar to the government, the Berbers were charged with inciting actions threatening law and order and internal state security, chanting slogans attacking the principles of the constitution and calling for the recognition of the Berber language as an official language...On 3 May 1994, seven secondary school teachers were arrested because they participated in a Mayday demonstration organized by the Democratic Confederation of Workers. They were accused of holding banners in the Berber language and shouting slogans for the recognition of Tamazight in the constitution.” However, in a speech on 20 August 1994, the king of Morocco stressed the necessity of preserving the Amazigh culture and declared that Tamazight would begin to be taught in schools in Morocco. On 24 August 1994, the national television station began broadcasting the news in Tamazight three times a day. (Driss Benmhend, *The Amazigh Revival in Morocco* <<http://www.wafin.com/driss.phtml>>).

^{clxiii} However, *Ethiopia*, in *DEP'T ST. HUM. RTS. REP.* (2000) <<http://www.state.gov/g/drl/rls/hrrpt/2000/af/index.cfm?docid=789>>, describes riots and conflict over attempts to impose one or a few languages on ethnically diverse communities.

^{clxiv} Based on information provided by the Panel of Experts.

^{clxv} The stool and the skin are symbols analogous to a throne in other cultures. The chiefs of southern Ghana traditionally sit on stools, while those of northern Ghana sit on skins. The phrase “stool and skin lands” refers to community lands.

^{clxvi} Article 20 of the Constitution of Ghana sets out detailed procedural requirements that must be followed in the event of state acquisition of property. Property may be acquired only if there is “reasonable justification for causing any hardship” to the person whose property is being acquired (art. 20(1)(b)); compensation must be fair, adequate and prompt (art. 20(2)(a)); in the event of displacement “the State shall resettle the displaced inhabitants on suitable alternative land with due regard for their economic well-being and social and cultural values” (art. 20(3)).

^{clxvii} Under Article 267(6) of the Constitution of Ghana, 10% of the revenue accruing from stool lands must be paid to the office of the Administrator of Stool Lands to cover administrative expenses; the remaining revenue must be disbursed in the following proportions: (a) 25% to the stool through the traditional authority for the maintenance of the stool in keeping with its status; (b) 20% to the traditional authority; (c) 55% to the District Assembly within the jurisdiction of which the stool lands are situated.

^{clxviii} Article 272 of the Constitution of Ghana provides that the National House of Chiefs shall (a) advise any person or authority charged with responsibilities relating to or affecting chieftaincy; (b) undertake the progressive study, interpretation and codification of customary law with a view to evolving, in appropriate cases, a unified system of rules of customary law, and compiling the customary laws and lines of succession applicable to each stool or skin; (c) undertake an evaluation of traditional customs and usages with a view to eliminating those customs and usages that are outmoded and socially harmful; (d) perform such other functions, not being inconsistent with any function assigned to the House of Chiefs of a region, as Parliament may refer to it. Under Article 273, the National House of Chiefs has appellate jurisdiction in matters relating to or affecting chieftaincy that are referred to it by one of the Regional Houses. In addition,

the National House has original jurisdiction with respect to matters specified in Article 273(5). The Regional Houses of Chiefs perform similar functions at a regional level.

^{clxix} A DANIDA report states that the traditional institution of queen mothers has created an important power base for women and provides a channel of influence on decision-making at the local level. The *ohemaa* (queen mother) nominates the *omanhene* (chief) and is the advisor to the chief. Queen mothers are represented at the chief's council in their own full right (traditional council at sub-regional levels). (DANIDA, *Evaluation of Danish Support to Promotion of Human Rights and Democratization – Ghana* <<http://www.um.dk/danida/evalueringsrapporter/1999-11/1999-11-6/kap4.asp>>) However, another source reports that while these women are represented at the grassroots level of the Houses of Chiefs, they are not yet in the Regional and National Houses of Chiefs. (Don Ray, *Africa's House of Chiefs: A Model for Aboriginal Governance in Canada?* <http://www.idrc.ca/reports/read_article_english.cfm?article_num=953>).

^{clxx} The choice of dimensions is a synthesis of those issues that have been at the core of national and international efforts to protect indigenous rights, as codified in ILO Convention 169 and the Draft United Nations Declaration on the Rights of Indigenous Peoples.

^{clxxi} According to para. 1 of OD 4.20, the “directive describes Bank policies and processing procedures for projects that affect indigenous peoples. It sets out basic definitions, policy objectives, guidelines for the design and implementation of project provisions or components for indigenous peoples, and processing and documentation requirements.” These objectives represent a hybrid between a broad policy instrument and operational guidelines for Bank officials. This dual nature must be taken into account, when evaluating the directive's overlap with national regulatory framework's and policies.

^{clxxii} The indigenous population of Canada comprises three groups: Indians, Métis and Inuit. According to the 1996 census (available at <http://www.statcan.ca/Daily/English/980113/d980113.htm>), 2.8% (799 010 people) of Canada's inhabitants were of Aboriginal origin. Government-Aboriginal relations were, until recently, largely defined by a series of treaties, concluded in the second half of the 19th, and first half of the 20th centuries. Since the 1970s, a number of court cases and comprehensive land claims settlements have gradually expanded the scope of Aboriginal rights. Nevertheless, serious gaps between white and native Canadians remain for almost all socio-economic indicators.

This synopsis will focus on Indians; for an overview of specific issues regarding the Métis and Inuit peoples, see e.g. Shin Imai, *Aboriginal Law Handbook*, Carswell 1999, pp. 83-112.

^{clxxiii} New Zealand's indigenous people, the Maori, comprise about 15% of the country's population, or some 580 000 people. (1996 census). The Treaty of Waitangi of 1840 between the British Crown and the Maori people established the basic principles for the relations between the native population and the white settlers). As a result of differing conceptions about the meaning and scope of the Treaty, the Maori population was not able to preserve their rights. As a result of growing dissatisfaction, the Waitangi Tribunal was established, in order to investigate any shortcomings in the implementation of the Treaty. Despite some progress, socio-economic disparities between Maori and non-Maori continue, particularly with regard to school retention rates and unemployment (see e.g. the 1998 *Closing the Gaps* report available at <http://www.tpk.govt.nz/publications/docs/gap98.pdf>).

^{clxxiv} The Sami today make up approximately 1%, or 40 000 people, of Norway's population, and inhabit predominantly the three Arctic counties of Finnmark, Nordland and Tromsø. The Norwegian Government has, until recently, pursued a policy of Norwegianization. It was only in the 1980s, when, in the wake of some controversy over a dam project, Sami issues made it onto the political agenda. The recommendations of the Sami Rights Commission led to the Sami Act, and a constitutional amendment guaranteeing the Sami “way of life”. In addition, Norway is one of the few countries that has ratified ILO Convention 169.

^{clxxv} According to the most recent population estimates (available at <http://www.census.gov/population/estimates/nation/intfile3-1.txt>), 0.9% of the US population, or 2.5 Mill. People, are of American Indian, Eskimo or Aleut origin. While the early history of US – Native American relations was characterized by wars, removals, the establishment of reservations and attempted

assimilation, more recent government policies have stressed the preservation of the tribes and their self-determination. This policy change has, however, not removed the socio-economic disparities: U.S. Census data indicate that in 1996, 30.9% of Native Americans as a whole had family incomes below the poverty line, in comparison with 13.8% for the U.S. population as a whole (United States. Bureau of the Census. Statistical Abstract of the United States 1996. Dept of Commerce, 1996, Table 52).

This synopsis will focus on Indians; for an overview of issues regarding Alaska Natives and Native Hawaiians see e.g., Felix S. Cohen, *Handbook of Federal Indian Law* (1982 ed.), Michie 1982, pp. 739-810.

clxxvi Before 1985 Band membership was typically through descent in male line only. Amendments to the Indian Act in 1985 provided for the recovery of lost status for women and children. Increasingly, many bands have their own membership/citizen codes. For details on the legal recognition of Indian status see e.g. Jack Woodward, *Native Law*, Carswell 1989, pp. 1-50.

clxxvii e.g. *Maori Affairs Restructuring Act 1989, Rununga Iwi Act 1990, Maori Land Act 1993*.

clxxviii For example, to be eligible for Bureau of Indian Affairs services, an Indian must (1) be a member of a Tribe recognized by the Federal Government (25 CFR 83), (2) one-half or more Indian blood of tribes indigenous to the United States (25 USC 479); or (3) must, for some purposes, be of one-fourth or more Indian ancestry. Tribes have set up their own membership criteria, although the U.S. Congress can also establish tribal membership criteria. Becoming a member of a particular tribe requires meeting its membership rules, including adoption. Except for adoption, the amount of blood quantum needed varies, with some tribes requiring only proof of descent from an Indian ancestor, while others may require as much as one-half. See Felix S. Cohen, *Handbook of Federal Indian Law* (1982 ed.), Michie 1982, pp. 1-23.

clxxix This row addresses the overall processes and mechanisms in place to secure indigenous land and resource rights, while the subsequent rows deal with the status of individual resources.

clxxx For a summary of the land claims processes see Shin Imai, *Aboriginal Law Handbook*, Carswell 1999, pp. 71-75. An excellent overview of past and current Aboriginal claims is found at <<http://www.ualberta.ca/~esimpson/claims/contents.htm>>.

clxxxi For the role of the Waitangi Tribunal in securing Maori land and resource rights see e.g. Paul McHugh, *The Maori Magna Carta: New Zealand Law and the Treaty of Waitangi*, Oxford University Press 1991, pp. 297-331. Claims and reports can be found at <<http://www.knowledge-basket.co.nz/waitangi/welcome.html>>.

clxxxii A summary of the proposals, which are currently being considered by the Norwegian Government, is provided by Torgeir Austena, The Proposal of the Norwegian Government Commission on the Rights of the Saami to Land and Water in Finnmark, in E. Berge and N.C. Stenseth (eds.), *Law and the Governance of Renewable Resources: Studies from Northern Europe and Africa*, ICS Press 1998, pp. 245-9.

clxxxiii See e.g., William C. Canby, Jr., *American Indian Law in a Nutshell* (3rd edition), West Group 1998, pp. 348-57. See also 25 USC 19 for individual settlements with Eastern Native Americans.

clxxxiv S. 35(1) of the *Constitution Act 1982* states that the “existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.”

clxxxv The leading case on Aboriginal title is *Delgamuukw v. British Columbia*, [1997] 3 SCR 1010. In this decision, the Supreme Court outlined three general features of Aboriginal title: Aboriginal land can only be alienated to the Crown; the source of Aboriginal title arises from the prior occupation of Canada; Aboriginal title is held communally by the “aboriginal nation”, and decisions are made by that community. The Court further ruled that Aboriginal title provides exclusive use and occupation of the land for a variety of purposes; and that the uses of Aboriginal title must be consistent with the group’s attachment to the land. For a commentary see Stan Persky and Don Ryan, *Delgamuukw : The Supreme Court of Canada Decision on Aboriginal Title*, University of Washington Press 2000.

clxxxvi A detailed overview of Aboriginal land and resource law is to be found in Jack Woodward, *Native Law*, Carswell 1989, pp. 195-286.

clxxxvii The main legal basis for Maori land issues is the *Maori Land Act 1993*. The authoritative text is Richard Boast et al., *Maori Land Law*, Butterworths 1999.

clxxxviii John B. Henriksen, The legal status of Saamiland rights in Finland, Russia, Norway and Sweden, *Indigenous Affairs* (April/May/June 1996), pp. 4-13.

clxxxix Tribal rights to the land may be conveyed or extinguished only by the federal government.

cxci "Indian country" comprises "(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same." (18 USC Sec. 1151) See also Felix S. Cohen, *Handbook of Federal Indian Law* (1982 ed.), Michie 1982, pp. 471-638.

cxci See e.g. para. 16.4.2 of the *Umbrella Final Agreement with the Yukon Indians* (available at <http://www.ainc-inac.gc.ca/pr/agr/umb>), which stipulates that "Yukon Indian People shall have the right to harvest for Subsistence within their Traditional Territory, and with the consent of another Yukon First Nation in that Yukon First Nation's Traditional Territory, all species of Fish and Wildlife for themselves and their families at all seasons of the year and in any numbers on Settlement Land and on Crown Land to which they have a right of access..."

cxcii In the *Treaty of Waitangi (Fisheries Claims) Settlement Act 1992* the Crown again recognized the importance of traditional fisheries and fishing places to Maori. After a long period of consultations between the Crown and Maori authorities, customary fishing regulations were promulgated in 1998. For an overview of fisheries issues see the website of the Treaty of Waitangi Fisheries Commission at http://www.tokm.co.nz/profiles/profiles_frmmain.htm.

cxciiii These rights are regulated in the reindeer Farming Act 1978. For details see Torgeir Austena and Gudmund Sandvik, The Legal Status of Rights to the Resources of Finnmark with Reference to Previous Regulations of the Use of Nonprivate Resources in E. Berge and N.C. Stenseth (eds.), *Law and the Governance of Renewable Resources: Studies from Northern Europe and Africa*, ICS Press 1998, pp. 205-19.

cxciiv Felix S. Cohen, *Handbook of Federal Indian Law* (1982 ed.), Michie 1982, pp. 441-70; William C. Canby, Jr., *American Indian Law in a Nutshell* (3rd edition), West Group 1998, pp. 419-46.

cxciv Jack Woodward, *Native Law*, Carswell 1989, pp. 241-4, 272-3.

cxcivi E.g. *Sahtu Dene and Métis Comprehensive Land Claim Agreement* (available at <http://www.ainc-inac.gc.ca/pr/agr/sahtu/sahmet_e.pdf>), which conveys "1813 square kilometers in fee simple, including the mines and minerals..." (para. 19.1.2.)

cxciivii Both the *Resource Management Act* and the *Crown Minerals Act*, which came into force in October 1991, take into account the dispositions of the Waitangi Treaty. In consequence, to initiate any kind of mineral resource development, the developer has to negotiate with the landowner who cannot refuse access for minimum impact developments. In the case of land belonging to the Maori community, they have the right to refuse access if it is considered sacred by the tribe. The refusal of access can occur during any stage of the mineral activity, but the Minister can overturn the decision if he considers the proposal to be in the public interest.

^{cxviii} John B. Henriksen, The legal status of Saamiland rights in Finland, Russia, Norway and Sweden, *Indigenous Affairs* (April/May/June 1996), pp. 4-13 (9).

^{cxix} Tribes can develop mineral resources through mineral leases or other agreements, subject to the approval of the Secretary of the Interior. See 25 USC 23.

^{cc} *Gathering Strength: An Aboriginal Action Plan* is a long-term, broad-based policy approach designed to increase the quality of life of Aboriginal people and to promote self-sufficiency. Its goals include: A new partnership among Aboriginal people and other Canadians that reflects the mutual interdependence; financially viable Aboriginal governments able to generate their own revenues and able to operate with secure, predictable government transfers; Aboriginal governments reflective of, and responsive to, their communities' needs and values; a quality of life for Aboriginal people like other Canadians. See <http://www.ainc-inac.gc.ca/gs/index_e.html>

^{cci} The purpose of this policy and the parallel restructuring of the responsible Ministry under the *Ministry of Maori Development Act 1991* was to transfer government services for Maoris to the different line ministries and leave the MMD with policy-making and monitoring functions.

^{ccii} For an overview of the evolution of Norway's Sami policy, see Oystein Steinlien, The Sami Law: A Change of Norwegian Government Policy Toward the Sami Minority?, *Canadian Journal of Native Studies* 9/1 (1989), available at <<http://www.brandonu.ca/library/cjns/9.1/Steinlien.pdf>>. See also Trond Thuen, *Quest for Equity: Norway and the Saami Challenge*, Institute of Social and Economic Research 1995.

^{cciii} Felix S. Cohen, *Handbook of Federal Indian Law* (1982 ed.), Michie 1982, pp. 207-57; William C. Canby, Jr., *American Indian Law in a Nutshell* (3rd edition), West Group 1998, pp. 33-58, 68-95.

^{cciv} OD 4.20 does not directly address issues of governance. The quoted provisions refer to project management.

^{ccv} A number of entities exist: special purpose agencies and bodies (Native Child Welfare Agencies), representative organizations (tribal councils), general law-making bodies (band councils under *Indian Act*). See also Shin Imai, *Aboriginal Law Handbook*, Carswell 1999, pp. 115-53. For the status and text of specific self-government agreements see <http://www.ainc-inac.gc.ca/pr/agr/index_e.html>.

^{ccvi} Paul McHugh, *The Maori Magna Carta: New Zealand Law and the Treaty of Waitangi*, Oxford University Press 1991, pp. 200-3.

^{ccvii} See Chapter 2 of the *Sami Act 1987*.

^{ccviii} Due to their sovereign status, tribes possess extensive self-government structures, which were first introduced by the *Indian Reorganization Act 1934*. Self-government includes all three branches of government. Legislative authority is usually vested in a tribal council, whose ordinances/resolutions are subject to approval by the Secretary of the Interior. Tribal courts administer the tribal courts and have both civil and criminal jurisdiction. Executive authority typically lies with a tribal chairman/president/governor, who represents the tribe. For more details see William C. Canby, Jr., *American Indian Law in a Nutshell* (3rd edition), West Group 1998, pp. 59-67.

^{ccix} For an overview of different programs see <http://www.ainc-inac.gc.ca/ps/ecd/pas_e.html>

^{ccx} Both services were created to promote and fund Maori businesses and to provide a number of ancillary services. See e.g., <<http://www.bizinfo.co.nz/about>>.

^{ccxi} See 25 USC Sec. 1451: “It is hereby declared to be the policy of Congress to provide capital on a reimbursable basis to help develop and utilize Indian resources, both physical and human, to a point where the Indians will fully exercise responsibility for the utilization and management of their own resources and where they will enjoy a standard of living from their own productive efforts comparable to that enjoyed by non-Indians in neighboring communities.” See also Felix S. Cohen, *Handbook of Federal Indian Law* (1982 ed.), Michie 1982, pp. 718-27.

^{ccxii} On community control of social services see Shin Imai, *Aboriginal Law Handbook*, Carswell 1999, pp. 181-9.

^{ccxiii} See Fiona Cram and Kataraina Pipi, Determinants of Maori Provider Success: Provider Interviews, A Summary Report, March 2001, available at <<http://www.arts.auckland.ac.nz/iri/pdf/MPS.pdf>>; for a case study on Maori health care, see Denese Herare, A Case Study: Health Care in Alison Quentin-Baxter (ed.), *Recognising the Rights of Indigenous Peoples*, Institute of Policy Studies, 1998, pp. 104-31.

^{ccxiv} For a slightly outdated overview see Felix S. Cohen, *Handbook of Federal Indian Law* (1982 ed.), Michie 1982, pp. 673-711. For a more recent summary of federal services see e.g. the Bureau of Indian Affairs, Division of Social Services, website at <<http://www.doi.gov/bia/tservices/dss/index.htm>> or the site of the Indian Health Service at www.ihs.gov.

^{ccxv} Jack Woodward, *Native Law*, Carswell 1989, pp. 342-5.

^{ccxvi} *Taonga* refers to all “treasured possessions” of the Maori people. See Maui Solomon and Leo Watson, The Waitangi Tribunal and the Maori Claim to Their Cultural and Intellectual Heritage Rights Property, *Cultural Survival Quarterly* 24:4 (Winter 2001), pp. 46-50.

^{ccxvii} “It is the responsibility of the authorities of the State to create conditions enabling the Sami people to preserve and develop its language, culture and way of life.” (Art 110a Norwegian Constitution).

^{ccxviii} This includes the *Native American Graves Protection and Repatriation Act (NAGPRA) 1990*, the *Indian Arts and Crafts Act 1990*, the 1980 amendments to the *National Historic Places Act 1955* and President Clinton’s Executive Order 13007 (1996) on Indian Sacred Sites. An excellent summary of these and other acts is found at Vine Deloria, Jr. and Richard W. Stoffle, *Native American Sacred Sites and the Department of Defense*, Report sponsored by the Legacy Resource Management Program, United States Department of Defense 1998.

^{ccxix} Jack Woodward, *Native Law*, Carswell 1989, pp. 339-41.

^{ccxx} *Wahi Tapu* has been defined in the *Historic Places Act 1993* as sites and places sacred to Maori people in the traditional, religious, ritual or mythological sense. These include such things as burial places; places where skeletal remains are kept; places where baptismal rites were performed; burial places of placenta; and places where rites were performed. See also EN 25.

^{ccxxi} Art. 2 (1) of the Norwegian Constitution.

^{ccxxii} William C. Canby, Jr., *American Indian Law in a Nutshell* (3rd edition), West Group 1998, pp. 316-21.

^{ccxxiii} Jack Woodward, *Native Law*, Carswell 1989, p. 342. While there is no constitutional guarantee to instruction in Aboriginal languages, government policy, as recently stipulated in *Gathering Strength: An Aboriginal Action Plan*, supports and promotes the use of native idioms in primary and secondary education. See also the *Mi’kmaq Education Act 1998*, which transfers federal government legislative and administrative jurisdiction for education to nine Nova Scotia First Nations and enables the Mi’kmaq to develop education systems and institutions to preserve and respect the values and traditions of Mi’kmaq culture.

^{ccxxiv} Para. 3 of the *Maori Language Act 1987* declares Maori an official language of New Zealand, and establishes a Maori Language Commission to promote the use of Maori.

^{ccxxv} Section 155 of the *Education Act 1989*.

^{ccxxvi} See Chapter 3 of the *Sami Act 1987*.

^{ccxxvii} See Native American Languages Acts of 1990 and 1992

^{ccxxviii} Aggie Brockman, *When All Peoples Have the Same Story, Humans will Cease to Exist: Protecting and Conserving Traditional Knowledge*. Unpublished Report for the Biodiversity Convention Office 1997.

^{ccxxix} For an analysis of the claim and Maori intellectual property issues in general, see Maui Solomon and Leo Watson, *The Waitangi Tribunal and the Maori Claim to their Cultural and Intellectual Heritage Rights Property*, *Cultural Survival Quarterly* 24:4 (Winter 2001), pp. 46-50.

^{ccxxx} See Philip Burgess, *Traditional Knowledge, A Report prepared for the Arctic Council Indigenous Peoples' Secretariat*, 1999, pp. 28-36, available at <<http://www.arcticpeoples.org/TKRepMay2000.pdf>>.

^{ccxxxi} Section 502 of the 1980 amendments to the NHPA directed the Secretary of the Interior to study the means of "preserving and conserving the intangible elements of our cultural heritage such as arts, skills, folklife, and folkways..." and to recommend ways to "preserve, conserve, and encourage the continuation of the diverse traditional prehistoric, historic, ethnic, and folk cultural traditions that underlie and are a living expression of our American heritage" (PL 96-515, December 12, 1980). For an example of executive policy in the area of traditional ecological knowledge see e.g. the Secretarial Order # 3206 of the Fish and Wildlife Service on *American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act*, available at <<http://endangered.fws.gov/tribal/Esatribe.htm>>.