What we mean by "indigenous people"

Indigenous peoples are kinship-based, non-industrialized societies that have traditionally relied on hunting, fishing, gathering, herding or gardening for their food, fuel and materials. They have tried to remain locally self-sufficient, and resist assimilation. Almost without exception, they have been treated as backward and inconvenient by nation-states, and have been killed, dispossessed, or forced to assimilate in the process of state-building and national economic growth. All of the world's 6,000-10,000 original cultures were originally "indigenous," but most of them were absorbed by the growth of nation-states long ago. Some survive as "minorities" which are identifiable or self-identified as culturally-distinct groups, but which no longer maintain distinct communities within distinct territories. It is not always clear whether a particular group is a minority or an indigenous people. The difference can largely be a matter of degree.

There is no simple or precise definition of "indigenousness" that applies equally well to all countries. Studies by two United Nations legal experts, José Martínez Cobo (1984) and Erica-Irene Daes (1994), both focused on aboriginality (being the first on the land), cultural distinctiveness, and self-identification as "indigenous." The United Nations' International Labour Organisation, in its Convention on Indigenous and Tribal Peoples, 1989 (No. 169), has adopted essentially the same three criteria. The ILO defines "tribal peoples" separately as persistently culturally-distinct, marginalized societies regardless of their aboriginality. According to the ILO, indigenous peoples and tribal peoples should have exactly the same special legal rights.

For example, North and South American Indians clearly satisfy the criteria of aboriginality, cultural distinctiveness, and self-identification. So do Aboriginal Australians, and the Maori of New Zealand. Many groups that regard themselves as "indigenous" are less clear-cut, and their status is disputed by the countries in which they live, especially in Africa, south and southeast Asia, and China. Africa poses thorny problems of definition, because most Africans consider themselves indigenous people who have achieved decolonization and self-determination. Yet many relatively small nomadic herding and hunter-gatherer societies such as the Tuareg (Niger), Maasai (Kenya), Mbuti (Congo) and San (southern Africa's Kalahari) have been displaced and oppressed ("internally colonized") by ethnically-unrelated African peoples who have been their neighbors for a thousand years and longer. The Ogoni of Nigeria claimed to be an "indigenous people" during their land struggle with Shell Oil. Ogoni author Ken Saro Wiwa was executed by the Nigerian authorities in 1995 for treason after he went to the United Nations to promote the rights of the Ogoni as an indigenous people. Therefore, there may be many more indigenous peoples, in more countries, than is currently acknowledged by the international community.

The United Nations working definition of indigenous people is as follows:

"...those people having an historical continuity with pre-invasion and pre-colonial societies, consider themselves distinct from other sectors of the societies now prevailing in those territories or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations, their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples in accordance with their own cultural patterns, social institutions, and legal systems."

Article 1 of the International Labor Organization’s (ILO) Convention Concerning Indigenous and Tribal Peoples in Independent Countries (Convention 169) has defined tribal and indigenous peoples as:

1. This Convention applies to:
   (a) tribal peoples in independent countries whose social, cultural, and economic conditions distinguish them from other sections of the national community, and whose status is regulated by their own customs or traditions or by special laws or regulations;
(b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or by geographic region to which the country belongs, at the time of the 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.

2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

The global distribution of indigenous peoples

Millions of indigenous people perished during Europeans' colonization of the Americas, and millions more in Africa. In Asia, where are found the largest remaining concentrations of indigenous peoples, these peoples have suffered from continued oppression by their neighbors rather than the results of overseas colonization. The northern and Far Eastern regions of Asia were colonized by Russians at the same time as European-Americans were settling the "wild West."

Few countries keep detailed or reliable statistics on indigenous peoples, and those statistics which do exist are not based on the same definition of "indigenous." In Latin American countries, for example, an "Indian" is someone whose first language is indigenous, rather than Spanish or Portuguese. One-fourth of Mexico's population is "Indian," according to this test, although more than 90 percent of Mexican people have at least some Indian ancestry. On the other hand, India includes all the members of particular "scheduled" ethnic and linguistic groups as "tribal" regardless of where or how they live. By this standard, one-fifth of India's total population is tribal or indigenous. At best we can make a conservative estimate of the global number and distribution of indigenous peoples as a starting-point for discussion.

Map 1. Principal Undisputed Concentrations of Indigenous Peoples.

Although the undisputed number of indigenous people world-wide is more than 200 million, the actual total in all countries could be more than 300 million. Approximately 15 percent of indigenous people live in the Americas, and 75 percent in southern Asia and southeast Asia. The larger figure, perhaps as high as 300 million, would be possible if tribal peoples in China, formerly Soviet central Asia and western Asia - the Hindu Kush - were included, but their legal status is bitterly disputed by governments. With one-fourth of the world's population, China poses a special problem for any assessment of global indigenous peoples. Hundreds of tribal "minorities" live in their ancestral homelands in western China along the
Himalayas (excluding Tibetans, who do not regard themselves as "indigenous" as such) and in the Asian steppes, numbering at least 100 million. China does not view them as "indigenous." Central and western Asia (Pakistan, Afghanistan, and former Soviet Central Asian states such as Kazakhstan) also pose difficult problems, since in many cases they contain culturally and linguistically-related tribal and non-tribal groups. The Pathans in Pakistan, and Bedouin of the Arabian peninsula, are sometimes described as indigenous or tribal peoples. Many other Asian groups could also be included. In some countries, including Guatemala and Bolivia, indigenous people are actually a majority, but have historically been deprived of the freedom and resources to govern themselves. This is like the situation which existed during the former apartheid regime in South Africa. Indigenous people are also the majority within very large regions of Canada and Russia.

**Indigenous peoples and biological diversity**

**Map 2. Principal Concentrations of Indigenous Peoples ... and The World's Critical Habitats**

The survival of large indigenous populations has largely been due to their relative geographical and economic isolation, in territories that were considered either inaccessible or worthless until recently. As a result, the world's remaining indigenous peoples tend to inhabit relatively undisturbed habitats that are reservoirs of biodiversity. Indigenous peoples of Canada, Russia, Amazonia, central Africa, and southeast Asia inhabit the world's remaining large boreal forests and rain forests. These forests play an important role in the carbon cycle and climate change. Circumpolar indigenous peoples hunt and trap on the world's largest remaining wetlands, crucial for the survival of most of the world's migratory birds; and in many of the world's most important estuaries, which are essential for the reproduction of shorebirds, migratory fish, and marine mammals such as whales and seals.
The indigenous peoples of Latin America and Asia live in some of the world's most important reservoirs of biodiversity, all of which are threatened by development and human migration. Half of all animal and plant species are found in the small areas marked on Map 3 as global biodiversity hotspots. Three of the highly biodiverse areas in which indigenous peoples are still numerous (Mesoamerica, the Andes and the southeast Asian archipelago) were the original source of the plants that now provide two-thirds of the total global food supply. Our most important food plants still retain their greatest genetic diversity within these three small biodiverse areas.

All people benefit from cultural diversity
Indigenous peoples live in reservoirs of high biodiversity which account for much of the genetic diversity of all life on this planet. Indigenous peoples have been harvesting plant and animal species, modifying their environments sustainably, and observing ecological processes for thousands of years. Their long-term observational knowledge of ecosystems is indispensable for improving conservation and sustainable use. If this knowledge is lost, it will take decades of expensive research to replace it--to the extent that it can be replaced at all.
Case Example 1. Fire and Forestry in Australia.

Kakadu National Park, 60 miles east of the city of Darwin in Australia's Northern Territory, was the ancestral homeland of the Gagadju people. Like other Aboriginal peoples of northern Australia, the Gagadju have been setting hundreds of fires each autumn to "clean up the country," for thousands of years--perhaps for as long as 40,000 years, according to some archaeologists. Frequent, carefully planned fires are smaller and cooler than wildfIres. Animals can escape the flames and many trees and shrubs, while scorched, survive.

When plans were made to establish Kakadu National Park in 1980, the Australian parks service acknowledged that "some evidence suggests that [Aboriginal] use of fire was important to maintaining ecological diversity," and it promised to "re-establish, so far as possible, the traditional Aboriginal patterns of burning." However, park rangers failed to learn the proper way of burning the country from the Gagadju. They were also reluctant to set fires near tourist areas, and in what they believed were "fragile" areas such as rocky escarpments and stands of paperbark trees. After several years of what Canadian anthropologist Henry Lewis describes as an "uneasy truce" between park rangers and the Gagadju, respect for Gagadju fire expertise is gradually improving, and Gagadju are assuming greater responsibility for managing the park.

Indigenous peoples have gradually accumulated extensive knowledge of the useful medicinal properties of the plants, fungi and insects in their territories, assembling their own locally-specific pharmacopoeia. Indigenous knowledge was the source of many early synthetic drugs such as quinine and aspirin, and has become one of the principal sources of identifying new molecules and genes for today's growing pharmaceutical and genetic-engineering industries. Indigenous peoples' knowledge is also of great potential value in agriculture; not only in agricultural biotechnology, but also in the search for less destructive biological pest controls.

Indigenous peoples have rarely been informed fully about research carried out in their territories, however, and are mobilizing against what they call "biopiracy" --the covert acquisition and marketing of communities' genetic and molecular knowledge. In one recent case, Argentina's Mapuche Confederacy accused University of Pennsylvania researchers of covertly collecting Mapuche blood samples in pursuit of leukemia-resistant genes. Argentine health officials had arranged for public clinics to collect the samples in the course of routine medical check-ups. Disputes such as these have disillusioned indigenous people about sharing their rich knowledge. In 1986, the U.S. Patent and Trademark Office issued Plant Patent 5,751 to Hawaiian botanist Loren Miller for a purportedly new variety of Banisteriopsis caapi, known among Amazonian Indians as ayahuasca, and widely used by them to prepare a ceremonial drink for healing and divination. A coalition of Amazonian Indians has filed a challenge to the patent on grounds that the patented variety is naturally-occurring and already in widespread medicinal use (the "prior art" exception to patentability). In May 1998, an association of Bolivian Indian quinoa producers, ANABPQUI, successfully used international media pressure to persuade the University of Colorado to abandon its U.S. patent number 5,304,718 to the quinoa variety "Apelawa," a hybrid of varieties grown by Aymara communities near Lake Titicaca, Peru.

Indigenous peoples are not only invaluable sources of ecological knowledge, but represent a reservoir of human cultural, artistic, and social possibilities. The economic value of this creative resource is suggested by the growing international market for indigenous peoples' art, designs, music, and folklore. Moreover, policy scientists and activists in many countries are seeking models of alternative social structures and institutions in indigenous cultures. For example, Canada and New Zealand have drawn inspiration from indigenous peoples for their restorative-justice movements, while the North American environmental movement has borrowed indigenous peoples' conceptions of land ethics.

Threats to indigenous peoples' existence

Indigenous peoples in most countries are threatened with physical or cultural extinction. They are not only vulnerable because they are culturally distinct and continue to resist assimilation, but because their territories contain as-yet unexploited reserves of timber, minerals, and waterpower. Moreover, indigenous territories represent the least-inhabited regions of the countries which have the world's most rapidly-growing human populations.
Economic globalization and trade liberalization have accelerated since the end of the Cold War, and in turn are accelerating the growth of foreign investment in extractive industries and agribusiness in Latin America, Asia, and the former Soviet Union. The post-1991 wave of international capital investment has led to encroachments into previously unexploited regions, such as the mountains and rainforests, where indigenous peoples are especially numerous. Most of the reported destruction of indigenous peoples has been associated with hydroelectric dams, petroleum and open-pit "hard rock" mining, logging and pulp mills, and plantations. There have been hundreds of reported cases of conflicts between indigenous peoples and these sectors since 1990.

**Case Example 2. Tacna-Arica: A Catastrophic Megaproject in Bolivia**

Financed by the World Bank in cooperation with the governments of Bolivia, Chile, and Peru, the Tacna and Arica projects are designed to divert water from lakes and streams in the *altiplano* (Andean plateau) to towns and farmland along the arid Pacific seacoast. International engineering firms are involved in the construction of a large network of dams and canals that will drain up to 100 percent of the flow of highland streams, and lower the level of scenic, ecologically important bodies of water, such as Lake Titicaca.

Water is being diverted from the territories of three Bolivian Aymara Indian *ayllus* (traditional communes) in the vicinity of Achiri, 85 miles south of Bolivia's capitol, La Paz. The Achiri region has a cool damp climate, and is ideal for the native Andean shrubs and grasses which form the preferred foods of the South American relatives of the camel, such as llamas. Achiri households have continued to rely primarily on herding mixed flocks of llamas and other native animals for their livelihoods. However, diversions of water from Achiri have lowered the water table and reduced spring flooding within an area of 40 square miles, increasing the salinity of lakes and creating growing pockets of desertification. Mine tailings are contaminating what water remains. Aymara leaders report the disappearance of many species of birds, fish, and plants on which they have traditionally relied for food and medicine, as well as the starvation of 230,000 llamas and other animals, forcing many Aymara families to abandon their traditional homes in the Achiri region and seek work in lowland towns.

In many countries, industrialization and urbanization have resulted in displacing large numbers of small-scale subsistence farmers, who have then migrated--often with government aid and encouragement--to the more remote parts of their country.
in search of a fresh start. The areas targeted by desperate, impoverished migrants tend to be the territories of indigenous peoples. Urban poverty in Brazilian cities such as Sao Paolo and Rio de Janeiro has played as large a role in the massive recent deforestation and displacement of indigenous peoples in Amazonia as large-scale commercial logging and mining.

The industrialization of farming, often referred to as the "Green Revolution," has also displaced millions of small-scale farmers Asia and Latin America. When farmers move to unfamiliar territories, they lack adequate knowledge of the environment, and often cause a great deal of unintended erosion and soil degradation besides displacing indigenous peoples. When farmers fail, their lands tend to be bought and consolidated by commercial plantations which lack the knowledge or incentives to farm sustainably. Developing countries' failure to give adequate legal protection to indigenous peoples, combined with failure to address poverty and unemployment among non-indigenous citizens, has often led to a vicious circle of migration, land degradation, and ever increasing rural poverty.

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**Case Example 3. Trade Liberalization and the Orinoco Delta.**

The economic growth of Venezuela has grown increasingly dependent on exports of petroleum, accounting for almost 80 percent of Venezuela's total export earnings. Responding to the global wave of trade liberalization, Venezuela opened its nationalized petroleum industry to foreign investors in 1993, and opened its oil reserves in the Orinoco River watershed to development by foreign companies in 1995. Amoco, Citgo, Conoco, and BP Amoco obtained mining rights to tracts within the river's Amacuro Delta, a vast complex of estuaries, tidal marshes, and mangrove swamps which has been the home of many endangered animals as well as about 25,000 Warao Indians. Although the delta had previously been protected as a Biosphere Reserve, Venezuela opened it to petroleum development without environmental impact assessments, and without any involvement of the Warao who live there.

The mining companies have taken some positive steps, such as employing Warao, and providing health clinics in some Warao communities. Nevertheless, in March 1997 a regional assembly of Warao demanded an end to petroleum mining in their territory. The Venezuela government insists that there have been no substantial adverse environmental impacts, and the companies involved believe that employment and health care will compensate the Warao sufficiently for the loss of their traditional hunting and foraging way of life.

Some countries have invested heavily in population resettlement projects, with the stated goals of expanding food production, as well as "pacifying" or "securing" frontier regions. These programs often bring displaced farmers and the national army together in waging war on the indigenous peoples who already occupy the land. Many cases of "ethnic cleansing" have been reported in Guatemala, Peru, Brazil, Bangladesh, Burma, and Indonesia. Militarization of indigenous peoples' territories has also been associated with attempts to suppress drug trafficking (Peru, Colombia, and the "Golden Triangle" of Thailand and Burma) and forced labor (currently in Burma).

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**Case Example 4. Militarization and Mining at Itogon.**

Benguet Province has been the Philippines' most important mining region, producing 70 percent of its gold output and 30 percent of its copper. Benguet Corporation, Asia's largest primary gold producer, has almost complete control of gold mining in Benguet Province under concessions granted by the former president, Ferdinand Marcos. Itogon, in the heart of the mining area, is the home of nearly 60,000 Igorot people, who traditional farmed and collected alluvial gold for their livelihood. Conflicts between Benguet Corporation and the Igorot intensified in 1989, when the company switched from underground mining of high-grade gold ore, to open pit mining of more abundant, lower-grade ores. Benguet Corporation's pits and tailing spread over an area of six square miles near the Antamok River. Run-off from mine tailings reportedly contaminated rice fields and caused severe health problems. In 1990, thousands of Igorot people barricaded the roads around the mine and demanded an environmental study. Although the government sent troops to clear roads, it also ordered the company to submit a satisfactory environmental impact assessment before resuming its mining.

Benguet Corporation conceded that its operations would adversely affect the quantity and quality of water in the region, and physically destroy Igorot fields and orchards. It promised to pay compensation for crop losses, and to restore landforms and vegetation after all of the ore had been removed. This satisfied the Aquino government, which authorized the resumption of mining, and stationed troops at Itogon to protect the company's assets. In 1995, the Philippines' mining laws were amended to permit unlimited foreign ownership, and Benguet Corporation sold some of its gold properties to a Canadian joint venture
of Echo Bay Mines and TVI Pacific; while the rights of indigenous communities to their "ancestral domains" were strengthened by the Indigenous Peoples Rights Act in 1997. In the mean time, the Itogon community has grown divided. Some Igorots advocate employment and benefit-sharing with the mining project, while others continue to demand that all mining be halted.

Development projects often contaminate water, crops and wildlife; destroy critical habitats and food sources; and physically displace indigenous peoples, resulting in malnutrition, contagious disease, and severe stress. Indigenous peoples have experienced declining health, increased birth defects and disability, and shorter life expectancies. The health impacts of inappropriate development have been exacerbated by erosion of social organization, cultures, and languages, as well as a loss of local knowledge systems. When indigenous peoples lose their cultures, languages, and knowledge systems, they lose the capacity to resist encroachments and adapt to change. Chronic stress and depression also directly affect the immune system and human health.

For example, in 1998, the UN Committee on the Rights of the Child expressed concern about the health risks to indigenous children from petroleum exploitation in Amazonian Ecuador, and recommended that the government of Ecuador take measures to regulate mining and combat pollution. As a 1996 Harvard Law School study found, however, most countries lack adequate regulatory and legal mechanisms to hold foreign companies accountable for damage to the environment and to human health. In addition, few countries can afford to rehabilitate damaged ecosystems. The United States has spent over a billion dollars decontaminating uranium mines on Indian reservations, which operated from the 1940s to the 1970s without adequate safety regulation.

A growing concern among indigenous peoples worldwide is the role of dietary change in adult-onset (non-insulin dependent) diabetes and heart disease. Diabetes affects barely five percent of North Americans, but as many as one-third of American Indians. Similarly high diabetes rates have recently been reported among Aboriginal Australians, Andean Indians, and tribal peoples in Papua New Guinea. Diabetes and heart disease have been linked to changing diets in communities which, until very recently, lived by hunting, fishing, or gathering, growing and eating fibrous starchy roots, and then switched to refined flour and sugar.

The vicious circle of ecological damage, declining human health, and the erosion of communities' resilience has often been aggravated by outside efforts to "help" indigenous peoples, such as foreign aid programs, and benefit packages provided by companies as compensation for the use of indigenous peoples' lands. This has often resulted in making indigenous peoples more dependent on money, imported foods, and outside decisionmakers.

Well-intentioned efforts to protect global biodiversity, such as the establishment of national parks and protected areas, have involved the removal of indigenous peoples or restrictions on their subsistence activities. For example, American Indians were removed from Yosemite and Yellowstone National Parks when they were set aside more than a century ago. San ("bushman") hunter-gatherers are still being removed from the Kalahari Game Reserve in Botswana today. Disputes persist, however, even in North America, where Indian tribes assert the right to continue to harvest wildlife and medicinal plants in national parks and national forests. In addition, tourism also impacts indigenous peoples.

Malaysia and Brazil, among other countries, have built complete "tribal villages" for tourists, involving the resettlement of genuine communities. The Philippines attracted significant attention with its supposedly "stone-age" Tasaday settlement, which proved to be a hoax. Sioux and Cheyenne elders unsuccessfully sought a court order to prevent the development of their principal sacred site, Bear Butte, as a South Dakota state cultural park. The Navajo Nation administers a number of popular heritage sites such as Canyon de Chelly, however, and Australia turned over the administration of Uluru (Ayers Rock) to its traditional Aboriginal custodians, who keep tourist activities and ceremonial sites separated.

"Exotic" tourism and ecotourism have drawn wider attention to the richness and diversity of indigenous peoples' cultures, but frequently engage in "packaging" and marketing strategies which distort cultures, degrade traditional ceremonial practices, and transform indigenous communities into trinket-selling, wage-dependent Hollywood back-lots. Tourism also places additional burdens on local water, food and fuel supplies, and attracts additional traffic with road construction. The net effect can be environmental degradation and social disruption, quickly destroying the ecological and cultural features tourists come to experience.
Indigenous peoples' vulnerability

Indigenous peoples today are vulnerable to destruction of their territories and communities, partly because of their distinctive cultures and values. As small, non-hierarchical and non-industrial societies, indigenous peoples lack the bureaucratic institutions, strong centralized leadership, accumulation of material wealth, military power or aggressiveness of their neighbors. Because of their geographical isolation, social marginalization, and relatively small size, most indigenous peoples were excluded from the historical process of developing national political institutions, and are rarely included in present-day national decision making. They rarely have representatives in the national legislature; fewer than 25 indigenous people hold national-level elected offices in the Americas. Indigenous peoples also tend to be most numerous in countries that have not yet become inclusively democratic, especially in southeast Asia and Central America. Even where indigenous peoples achieve some level of formal representation in the national government it may not involve any real power. Very few countries recognize indigenous peoples' right to govern their own territories and communities, moreover. Effective self-government exists to some extent in Greenland, Panama, and the United States.

Foreign companies usually do not consult with indigenous peoples before launching major extractive projects, relying on governments to address local communities' rights. Governments often encourage companies to avoid contact with local people. For example, U.S.-based gold giant Freeport McMoran, in a current court battle over the destructive effects of its mine in Irian Jaya, has argued that Indonesian authorities forbid the company to enter into any negotiations or agreements with tribal communities. Governments eager to attract investment generally avoid recognizing the rights of indigenous peoples who may be affected, and often use military power to suppress local opposition.


The BaKa and BaKola peoples live in the dense tropical rainforests of Cameroon. They number as many as 40,000, and comprise about one-fourth of the African indigenous peoples who were once described as "pygmies." Until very recently, highly-biodiverse rain forests covered more than half of the national territory of Cameroon, sheltering one-fourth of the world's known species of primates. Only six percent of the forest has been set aside in national parks, and barely two percent for the use of local communities. The government of Cameroon does not recognize BaKa and BaKola land rights to areas they traditional hunt and forage.

In the mid-1980s, Cameroon privatized state-owned enterprises and eliminated domestic price controls under restructuring plans developed by the World Bank and the International Monetary Fund. In 1990, Cameroon extended generous tax incentives and legal security to foreign investors, while opening its previously undeveloped forests to foreign logging companies in an attempt to diversify exports. As a result, more than half of Cameroon's rainforests have been logged, and deforestation is continuing at the rate of 400 square miles per year. Four-fifths of the capital in Cameroon's forest industry is European, mainly from French multinationals. United Nations agencies have promoted the expansion of logging in Cameroon without acknowledgment the existence or concerns of the BaKa and BaKola. Although Cameroon law requires consultations with forest-dwelling communities prior to any grant of logging concessions, and payment of compensation, it appears that BaKa and BaKola have not been consulted or compensated.

Growing recognition of indigenous rights

The United Nations has begun to adopt policies and treaties which condemn the destruction and forced assimilation of indigenous peoples, and recognize indigenous communities as the primary beneficiaries and managers of their ancestral territories. The United Nations has also recognized that the long-term value of indigenous ecological knowledge and stewardship outweighs the financial gains of development projects.

- The first treaty in this field, the International Labour Organisation (ILO) Convention on Indigenous and Tribal Populations, 1957 (No. 107), recognizes indigenous peoples' ownership of the lands they occupy. It was ratified by 27 countries, mainly in Latin America. Disputes over compliance can be referred by the ILO to the World Court. **Ratifications:** Angola, Argentina, Bangladesh, Belgium, Bolivia, Brazil, Colombia, Costa Rica, Cuba, Dominican Republic, Egypt, El Salvador, Ecuador, Ghana, Guinea-Bissau, Haiti, India, Iraq, Malawi, Mexico, Pakistan, Panama, Paraguay, Peru, Portugal, Syrian Arab Republic, and Tunisia.

other things, the revised convention extends the land rights of indigenous peoples to all of the resources they have traditionally used, and prohibits dispossession or involuntary development of any kind. Thus far, it has been ratified by 13 countries. ILO Convention No. 169 (1989) provides generally that “special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment” of indigenous peoples, and that “such measures shall not be contrary to the freely-expressed wishes of the peoples concerned.” Before taking action, governments must “consult the peoples concerned, through appropriate procedures and in particular through their representative institutions.” Consultations with indigenous leaders “shall be undertaken in good faith … with the objective of achieving agreement or consent to the proposed measures.” Moreover, “indigenous peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development.”

Ratifications: Bolivia, Colombia, Costa Rica, Denmark, Ecuador, Fiji, Guatemala, Honduras, Mexico, the Netherlands, Norway, Paraguay, and Peru. Ratification is currently under consideration by Argentina, Brazil, Chile, Finland, the Philippines, and Venezuela.

- The Convention on Biological Diversity (1992) has been ratified by nearly every Member State of the United Nations. It directs governments to protect traditional sustainable uses of living resources, as well as the local knowledge systems associated with customary uses of ecosystems. A Working Group on Traditional Knowledge and Management Practices was established in 1998 by the United Nations in connection with the implementation of this convention. The Convention on Biological Diversity directs governments to “protect and encourage customary uses of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements;” and “respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices.”

- The International Covenants on Human Rights, and the International Convention Against All Forms of Racial Discrimination, are the main UN treaties in the human-rights field. Ratified by nearly all countries, they do not refer explicitly to indigenous peoples. However, they have been interpreted by United Nations supervisory committees as requiring protection of indigenous peoples’ lands and cultures. State Parties must submit periodic progress reports to United Nations committees of legal experts, which report their findings to the General Assembly. For example, in its General Comment No. 23 (1991), the UN Human Rights Committee stated that, “With regard to the exercise of the cultural rights protected under article 27 [of the International Covenant on Civil and Political Rights], the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of minority [and indigenous] communities in decisions which affect them.”

A draft United Nations Declaration on the Rights of Indigenous Peoples, and draft Organization of American States Declaration on the Rights of Indigenous Peoples, will go even farther in recognizing indigenous peoples’ rights, if they are adopted. The protection of the heritage of indigenous peoples, including cultural property and intellectual property rights, is the subject of a draft set of principles and guidelines awaiting approval by the UN Commission on Human Rights. The UN’s Working Group on Indigenous Populations has met annually at Geneva since 1982, and its meetings are attended by 500 or more indigenous people. In 1993, the UN General Assembly agreed in principle on the eventual establishment of a “permanent forum for indigenous peoples,” which will be given greater authority than the existing Working Group, and will probably include indigenous people as voting members. The draft Principles and Guidelines on Indigenous Heritage recognize that “indigenous peoples must exercise control over all research conducted within their territories, or which uses their people as objects of study,” and that “the free and informed consent of the traditional owners should be an essential precondition of any agreements which may be made for the recording, study, use or display of indigenous peoples' heritage.” Researchers “should make every possible effort to increase indigenous peoples' access to all forms of medical, scientific and technical education, and participation in all research activities which may affect them or be of benefit to them.” Likewise, “business and industry should contribute financially and otherwise to the development of educational and research institutions controlled by indigenous peoples and communities.”
Indigenous peoples' grassroots and international organizations have grown greatly in number, coordination, and influence since the 1970s. Several hundred different indigenous organizations have participated in United Nations meetings, although fewer than 20 have acquired permanent "consultative status" with UN bodies, as compared to more than 2,000 non-indigenous organizations. Indigenous organizations still face significant barriers. Most are located in isolated regions; and lack the resources to participate in international conferences. Hence indigenous peoples still rely heavily on mainstream human-rights and environmental organizations to help broadcast their concerns.

Positive national developments

The United Nations can make recommendations, and can sometimes embarrass governments with negative publicity. Concrete improvements at the grass-roots require changes in national-level laws and programs, however. There have been several positive developments, such as the Philippines' sweeping Indigenous Peoples' Rights Act of 1997 (IPRA), based on ILO Convention 169. In principle, indigenous peoples in the Philippines have won the right to veto development projects and research activities in their ancestral territories. Indigenous Peoples’ Rights Act states that "access to biological and genetic resources and to indigenous knowledge related to the conservation, utilization and enhancement of these resources, shall be allowed within ancestral lands and domains of [indigenous peoples and communities] only with the prior informed consent of such communities, obtained in accordance with customary laws of the concerned community."

Costa Rica's Biodiversity Law (1998) has also attracted considerable attention. Among other things, it requires formal consultations with indigenous communities before any research is conducted on genetic resources, as well as benefit-sharing in the event of any commercial applications of genetic or biochemical research. The Organization for African Unity recommended the adoption of similar "community rights" legislation by all African countries in 1998. Other countries are considering similar legislation.

In many countries, including the United States, Canada, Chile, India, and Nigeria, the former European colonial powers made treaties with indigenous peoples in the 17th through 19th centuries as a way of securing trade monopolies and expanding their empires. Many indigenous peoples today in the Americas, south Asia, and the Pacific rely upon these treaties as evidence of their rights to land and autonomy. Only a few governments regard these treaties as still binding. Courts in the United States will enforce treaties made with Indian tribes, but recognize the power of Congress to extinguish treaties unilaterally. Canada took the same approach until 1982, when it amended its constitution to recognize "the aboriginal and treaty rights of the aboriginal peoples of Canada." In New Zealand, the 1840 Treaty of Waitangi is being implemented by a special national tribunal.

Emerging market-related measures

There are limitations to what governments can accomplish through legislation and regulations. Some of the most promising developments in the recognition and protection of indigenous peoples involve market mechanisms, industry self-regulation, and private international (trade and contract) law. The adoption of industry standards, the growth of socially responsible investing, and "green" product labeling directly affect companies' management practices by rewarding good practices on their bottom line.

In January 1999, the European Parliament adopted a Resolution on E.U. Standards for European Enterprises Operating in Developing Countries, in which it "encourages voluntary initiatives by business and industry to promote codes of conduct, with effective and independent monitoring and verification." European industry codes are to include the rights of indigenous peoples, as defined by ILO Convention No. 169, "recognizing their important role for sustainable development."

Some industries have already begun to discuss such standards. The global forest industry has considered the development of sustainable-forestry criteria as an alternative to a new United Nations treaty on forest conservation. The International Standards Organization has expressed concern about the implications of adopting criteria that could become the basis for a global forest-product label, however; and it is unclear whether governments can enforce industry standards by restricting the import of non-conforming products. Austria adopted regulations restricting the import of tropical timber on grounds that tropical logging displaced indigenous communities and damaged ecosystems, but was forced to withdraw them to avoid trade disputes. A World Trade Organization dispute-resolution panel recently told the United States that it cannot apply its sea-turtle bycatch standards to importers of southeast Asian shrimp. These cases involved individual countries' national laws, however, rather than international standards adopted by industry groups.
Another evolving idea has been extending the concept of “green labeling” (such as “dolphin-safe tuna”) to human rights. The European Parliament refers to this as a “social label,” and it might be based on concerns such as forced labor, child labor, respect for ILO occupational health and safety standards, and respect for the rights of indigenous peoples. However, there are still issues to be resolved under the fair-trade principle administered by the WTO. U.S. laws requiring green labeling of imports such as tuna have been struck down by WTO panels as lacking a sufficient scientific basis.

In the mean time, indigenous peoples are turning increasingly to private liability law to manage corporations’ conduct in their territories. For example, Ecuadorian Indians sued Texaco in a New York federal court in 1993 for water contamination and health problems arising from pipeline spills (*Aguinda v. Texaco*). The Amungme of Irian Jaya (West Papua) have sued Freeport McMoran in Louisiana federal court over contamination by gold mine operations and the forced removal of thousands of people from the mine site (*Beanal v. Freeport McMoran*).

In the final analysis, corporate culture must change and embrace the wisdom of disclosure, consultative arrangements and transparency when they are dealing with indigenous communities. Some successful companies have discovered that grassroots cooperation not only reduces the risks of political conflict and violence, but improves their bottom line.

### Case Example 6. An Effective Consumer Boycott in Canada: the Lubicon Crees.

The boreal forests surrounding Lubicon Lake, 230 miles northwest of Edmonton, Alberta, are home to several hundred Cree people. Their remote settlement was not recognized as an indigenous community until 1939. The Lubicon Crees continued to subsist by hunting and fur trapping until the province of Alberta began to lease the area to petroleum companies in the 1970s. The Lubicon Crees asked the courts for an injunction, arguing that they had never surrendered their aboriginal land rights. Although Alberta's highest court ruled that the Lubicon Crees had enough evidence of their rights to merit a trial, it refused to grant an injunction against developers. By 1984, 400 wells had been drilled within 25 miles of the community. Cree leader Bernard Ominiyak submitted a formal complaint against Canada to the United Nations Human Rights Committee.

In 1988, Alberta leased 11,000 square miles of forest surrounding Lubicon Lake to Daishowa-Marubeni International (DMI), which began the construction of a $500 million pulp mill on nearby Peace River. The Crees protested, and Alberta responded by offering them a settlement of $45 million and a 100 square mile reserve. Cree leaders demanded more land. Negotiations continued following a 1989 Human Rights Committee ruling that the human rights of the Crees had been violated. Three years later, frustrated Cree leaders began organizing a boycott of Daishowa paper products with the help of Friends of the Lubicons (FOTL), a group of Canadian environmental activists. By 1995, 43,000 retail stores in North America had joined the boycott. Alleging that it had lost $11 million, Daishowa sued FOTL and won a temporary injunction. However, in April 1998, Justice James MacPherson ruled that while FOTL owed the company $1 million for accusing it of “genocide,” peaceful picketing is protected as an exercise of free speech and could resume. Two months later, DMI announced that it would cease logging until the Cree land claim had been fully settled.

### Sources:

- Canadian Standards Association (Box 10);
- Four Directions Council, Strategic Network for Indigenous Peoples (Boxes 2, 3, 11);
- Henry Lewis, Department of Anthropology, University of Alberta (Box 1);
- United Nations Centre on Transnational Corporations (Boxes 4, 5).


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2. The ILO distinguishes between “indigenous” and “tribal” peoples while recognizing that both peoples have the same rights.