

Draft Code of Conduct

Indigenous Peoples and Conservation NGOs

Survival International
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Interpretation

In this Code the masculine includes the feminine and where the context so admits the single includes the plural and unless the context indicates otherwise the following expressions have the following meanings:

“Adjudicator”	a person of independent standing and suitable knowledge and expertise appointed to a Panel of Adjudicators on the terms contained in Schedule 1 to perform the duties of an adjudicator set out in Part VII
“Competent Authority”	any Minister, government department, public body of any description or person holding a public office vested with legal or administrative powers over a Protected Area.
“Conservation NGO”	any national or international non-governmental organisation which has adopted this Code and whose principal object is the conservation of nature and natural resources, and any associate or subsidiary under its effective control (“CNGO”)
“Contact Point”	a person appointed to put a party to a Part VII dispute in contact with a Mediator

“Human Rights”

the human rights and fundamental freedoms recognised in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law including the rights set out in ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries and in the United Nations Declaration on the Rights of Indigenous Peoples.

“Indigenous Community”

any community (and where the context so admits, any Representative of a community) which forms a non-dominant part of the national society and displays all or most of the following characteristics:

- (a) a close attachment to ancestral territories or geographically distinct habitats and to the natural resources in these areas;
- (b) self-identification and identification by others as members of a distinct indigenous group;
- (c) an indigenous language, often different from the national language;
- (d) customary social or cultural or political institutions that are separate from those of the dominant society; and
- (e) primarily subsistence-oriented production.

“Indigenous Peoples Organisation” any organisation formed by and composed wholly or primarily of members of an Indigenous Community which has been authorised by the Community to represent its interests (“IPO”)

“Lands” land or territory in a Protected Area including any coastal sea, sea ice, river, lake, tidal inlet, bay, estuary or shore between high water and low water which forms part of the total environment traditionally occupied or used by an Indigenous Community

“Mediator” a person of independent standing and suitable knowledge and experience appointed to a Panel of Mediators on the terms contained in Schedule 2 to perform the duties of a mediator set out in Part VII

“Non-Governmental Organisation” any national or international non-governmental organization of which a principal object is the promotion or protection of the rights of Indigenous Communities and which has an established relationship with a relevant Community or Communities (“NGO”)

“Protected Area” land and/or sea especially dedicated to the protection and maintenance of biological diversity and of natural and associated cultural resources managed through legal or other effective means

“Representative”

a person whom an Indigenous Community has nominated to act on its behalf in its dealings with a Conservation NGO provided that he or she belongs to the Community or to an Indigenous Peoples Organisation or a Non-Governmental Organisation and the Conservation NGO has no reason to believe that a conflict exists or is likely to exist between the interest of the Representative and the interests of the Community

“Resources”

fauna, flora or other natural resource in a Protected Area of which members of an Indigenous Community have traditionally made use for subsistence or other purposes

Part I: Involuntary Displacement

Rule 1 A CNGO shall not directly or indirectly cause procure or otherwise assist in the involuntary displacement of an Indigenous Community from Lands or Resources in a Protected Area.

Rule 2 A CNGO shall not participate in the management of a Protected Area that includes, or in any project that affects or is likely to affect, former Lands or Resources that have ceased to be occupied or used by an Indigenous Community in the last [] years unless on due enquiry it has reasonable grounds to believe that the Community:

- (1) was voluntarily displaced from those Lands or Resources; or
- (2) has consented to its doing so.

Provided that nothing in this Rule shall prohibit a CNGO from participating in the management of a Protected Area for an interim period of not more than [] years so long as throughout that period it uses its best endeavours to obtain any requisite consent

Rule 3 Any measure which materially restricts or is likely materially to restrict access by an Indigenous Community to Lands or Resources to which it has traditionally had access for subsistence purposes shall constitute a displacement.

Rule 4 A displacement shall be deemed to be involuntary unless on due enquiry a CNGO has reasonable grounds to believe that the displaced community has consented to it.

Part II: Agreements

Rule 5 A CNGO shall participate in the management of a Protected Area that includes Lands or Resources, or in any project that affects or is likely to affect them, only if it has reasonable grounds to believe that the relevant Indigenous Community has consented to its doing so and in accordance with an agreement negotiated in good faith with the Community.

Rule 6 Before it enters an agreement with an Indigenous Community a CNGO shall at its own expense in a language which is readily intelligible to the Community or its Representative:

- (1) invite the Community to participate in the preparation of maps of the Lands and Resources and of records of the uses to which they are put, unless and to the extent that the Community has already participated in the preparation of such maps and records and accepts that they are accurate
- (2) for a reasonable period prior to the conclusion of the agreement, prominently display in an appropriate place or places a concise summary of its terms and effect and of the complaint procedure set out in Part VIII, copies of all relevant maps and other records and an invitation to members of the Community to attend workshops or other meetings to discuss the proposed agreement
- (3) prepare and make available to members of the Community on reasonable request a record of the meetings
- (4) in the event that a substantial part of the Community is illiterate, in lieu of or in addition to (2) and (3) deploy such other means including audio-visual aids and pictorial representations as may be necessary to ensure that the members of the Community are able to understand the proposed agreement and have a reasonable opportunity to consider it among themselves.

- (5) make and pay for any transport and other arrangements that may be necessary to enable members of the Community to attend the meetings and to be accompanied by the IPO adviser of their choice or in the absence of any IPO the NGO adviser of their choice; and
- (6) appropriately modify the proposed agreement to accommodate any concerns raised at the meetings.

Rule 7 A CNGO shall enter an agreement with an Indigenous Community only if the agreement:

- (1) is expressed in a language which is readily intelligible to the Community or its Representative
- (2) requires the CNGO to comply with both the Code and any management plan as well as with the agreement itself, and attaches as separate appendices copies of the Code and the plan
- (3) by reference to maps or other records clearly identifies any agreed restrictions on the occupation or use of the Lands and Resources
- (4) clearly identifies any monetary or other benefit intended to ameliorate or compensate for those restrictions, explains the basis on which those benefits have been agreed and states when and how they are to be delivered
- (5) provides that any future proposal of the CNGO relating to the management of the Protected Area or to the project likely to have a material effect on the continued use and enjoyment of the Lands or Resources will require the consent of the Community or its Representative

- (6) requires the parties regularly to exchange information about issues relevant to the management of the Protected Area or to the project and to provide such additional information as either may from time to time reasonably require of the other
- (7) requires the parties to renegotiate in good faith any term of the agreement which a change in circumstances has rendered impracticable and the consent of the Community to any assignment of the agreement
- (8) establishes a simple and inexpensive procedure which requires
 - (a) both parties before they invoke Part VII to attempt to resolve any dispute informally (including a dispute as to whether the Community is entitled to terminate the agreement), and
 - (b) the CNGO to provide the Community with a postal or email address or fax number for the Contact Point if and when it requests them
- (9) requires the CNGO if and to the extent that the Community is unable to pay any costs that it may reasonably incur in connection with the matters summarised in (6) to (8) to pay those costs on its behalf
- (10) states that it is not intended to prejudice any claim that the Community has made or may make for legal recognition of its rights over the Lands or Resources
- (11) provides that the CNGO will withdraw from the management of the Protected Area or the project if the Community
 - (a) is involuntarily displaced from the Lands or Resources while the agreement is in force; or

- (b) terminates the agreement on the ground that the CNGO has failed on reasonable notice to remedy a breach of its terms that has had or will have a material adverse effect on the interests of the Community; and
- (12) accords in all other respects with best practice at the date of the agreement.

Part III: Free, Prior and Informed Consent

Rule 8

A CNGO shall have reasonable grounds to believe that an Indigenous Community has given its consent for the purposes of this Code if it has done so:

- (1) in the manner prescribed by its customary laws and practices or by such other means as the Community shall have adopted
- (2) free from any external coercion, intimidation or manipulation
- (3) after the Community has had a reasonable opportunity to consider
 - (a) all information in the possession or control of or reasonably available to the CNGO relevant to the matter on which the consent has been sought; and
 - (b) any expert advice that it may have obtained in the light of that information

provided that the CNGO:

- (4) shall inform the Community of its right to refuse its consent with at least as much prominence as it is informed of any benefits that it might reasonably expect to derive if it gives its consent;

- (5) if on due enquiry it has reasonable grounds to believe that customary laws and practice or the Representative with whom it deals have failed to have sufficient regard to the views of the Community as a whole, shall solicit and have regard to those views by such other means as may be appropriate in the circumstances; and
- (6) shall record the steps taken to obtain the consent of the Community and make the record available on reasonable request to members of the Community and to any other party entitled to inspect it in connection with the resolution of a Part VII dispute.

Rule 9 Information disclosed under Rule 8 shall be communicated in a language which is readily intelligible to the Community or its Representative and to the extent that it relates to a particular proposal for which consent is sought shall

- (1) describe the nature, size, pace, duration, reversibility and scope of the proposal, the personnel likely to be involved in its implementation and identify the affected Lands or Resources; and
- (2) include an assessment in which the Community has effectively participated of the likely economic, social, cultural and environmental impact of the proposal, its potential risks for the Community and the benefit that it might reasonably expect to derive from the proposal if it is implemented.

Rule 10 If and to the extent that the Community is unable to pay the cost of any independent advice that it may reasonably require to appreciate the significance of information disclosed to it under this Part, the CNGO shall meet that cost on its behalf.

- Rule 11 Before it begins site disturbing operations on Lands or Resources within a Protected Area a CNGO which claims to have obtained one or more consents from a Community in accordance with this Part may at its own expense refer the claim to the Contact Point for independent adjudication.
- Rule 12 The CNGO shall enclose with any notice of claim under Rule 11 the records prepared under Rule 8(6) and any other relevant documents.
- Rule 13 The Contact Point shall immediately forward copies of the notice of claim and supporting documents to the Representative or in his absence to an appropriate IPO or NGO and to a selected Adjudicator.
- Rule 14 The Adjudicator shall determine the claim in accordance with Rules 26 and 27 and in particular shall take any steps that he may consider necessary to ensure that the Community is made aware of the effect of Rule 15 and is given a proper opportunity to be heard on the claim.
- Rule 15 If the Adjudicator determines that the Proponent has obtained a requisite consent in accordance with this Part it shall not thereafter be open to the relevant Community or any third party on its behalf to complain that it did not give the consent.

Part IV: Isolated Communities

Rule 16 Part II shall not apply to any part of a Protected Area occupied or used by an Indigenous Community if and for so long as:

- (1) the physical isolation or other circumstances of the Community render it impractical for it to enter an agreement under Part II
- (2) the participation of the CNGO in the management of the Protected Area or in a project within the Area is unlikely to have any significant impact on the Lands and Resources of the Community or upon its social economic cultural or environmental well-being; and
- (3) the CNGO
 - (a) reviews at reasonable intervals whether sub-rules (1) and (2) continue to apply, and instructs or permits persons to enter upon the lands occupied or used by the Community only to the extent required to conduct those reviews; and
 - (b) acknowledges that any project with which it is concerned is not intended to prejudice any claim that the Community may make for legal recognition of its rights over its Lands or Resources.

Part V: Human Rights

- Rule 17 A CNGO shall cause its officers, employees and agents to support and respect the Human Rights of an Indigenous Community and its members in any Protected Area with which it is involved, and shall ensure that no such officer, employee or agent is complicit in an abuse of those rights.
- Rule 18 In particular the CNGO shall not discriminate against members of the Community on the ground of their indigenous identity or origin either in its recruitment of staff for the Protected Area, in the conditions of employment and opportunities for promotion which it offers its employees, or otherwise.

Part VI: Compliance Officers

Rule 19 A CNGO engaged in activities to which this Code applies shall

- (1) appoint a compliance officer to monitor its observance of the Code on terms that allow the officer
 - (a) to report directly to the chief executive officer or board of the CNGO any deliberate or repeated breach of either the Code or the agreement which has had or is likely to have a material adverse effect on the Indigenous Community
 - (b) to be relieved of his duties if he fails without reasonable excuse to report such a breach to the chief executive officer or board or is himself complicit in the breach.
- (2) ensure that the compliance officer
 - (a) discusses at regular intervals with any Indigenous Community with which it has made an agreement any matter relevant to the performance of the agreement or compliance with the Code
 - (b) maintains a record of those discussions
 - (c) makes the record available to members of the Community on reasonable request in a language which is readily intelligible to the Community or its Representative.

Part VII: Disputes

Rule 20 The parties shall attempt to resolve informally any dispute which arises in connection with this Code or an agreement.

Rule 21 If the parties cannot resolve a dispute informally either of them may send a notice of claim to the Contact Point by post, fax or email provided that the notice is copied to the other party and

- (1) states the names and contact details of the parties to the dispute
- (2) if it is made on behalf of an Indigenous Community, states that the claim has been authorised by those members of the Community whose names appear against their signature or mark in an attached list
- (3) briefly explains the efforts made by the Claimant to resolve the dispute informally
- (4) alleges that the other party has committed or threatens to commit one or more breaches of the Code and/or of the agreement which have had or are likely to have a material adverse effect on the Claimant; and
- (5) contains a concise summary of the facts relied upon in support of the allegation or allegations
- (6) exhibits a copy of any relevant agreement, a map or diagram of the location of any affected Land or Resources and any other material documents or explains why it has not been reasonably practicable to do so.

Rule 22 An IPO or NGO may also serve a notice of claim in accordance with the above Rule if the notice is supported by credible evidence that

- (1) the Community is unlikely to be able to represent itself effectively;
- (2) the IPO or NGO has been authorised by a substantial part of the Community to make the claim on its behalf; and
- (3) if the notice is served by an NGO, it was not practical for it to be served by an IPO

Rule 23 The Contact Point shall immediately forward the notice of claim to an appropriate Mediator. Within 21 days of his receipt of the notice, or within 14 days of his receipt of any additional information that he may have required from the Claimant during the same period, the Mediator shall:

- (1) if he is satisfied that the claim accords with Rule 21 (and Rule 22 if relevant), inform the parties that he will conduct a mediation as soon as is reasonably practical and require the party against whom the claim is made to respond to the notice in writing within such period as he considers reasonable; or
- (2) inform the parties that he is not satisfied that the claim accords with Rule 21 and/or 22 and why.

Rule 24 A mediation shall be conducted in private and in confidence and in the place, language and manner which the Mediator considers most conducive to a just and expeditious resolution of the dispute. It shall end when the Mediator:

- (1) is informed by the parties that they have settled the dispute on terms that they propose to incorporate in a binding agreement and is satisfied that those terms are not to the manifest disadvantage of the Indigenous Community or its members; or
- (2) is satisfied that there is no realistic prospect that the dispute can be resolved by mediation.

Rule 25 If and as soon as Rule 19(2) applies the Mediator shall refer the dispute to a suitable Adjudicator and immediately forward to him copies of the notice of claim and the response together with any other material documents in his possession save for any document that he reasonably believes to be confidential.

Rule 26 The Adjudicator shall take such steps as he may consider necessary to enable him to adjudicate the claim in a just and expeditious manner and in particular may

- (1) request further information and/or oral or written submissions from the parties and/or from any national or international NGO
- (2) conduct public hearings in the locality in which the dispute has arisen; and
- (3) engage interpreters and/or independent consultants to advise on any technical issues that may arise.

Rule 27 As soon as is reasonably practicable the Adjudicator shall inform the parties in writing of his decision and of his reasons for it. If and to the extent that he upholds the claim he shall at the same time give such further directions as he may consider necessary to give effect to his decision and in particular

- (1) to restore the parties so far as is reasonably practicable to the positions that they would have been in if the breach or breaches had not occurred

- (2) to ensure that the Indigenous Community or its members receive just and fair compensation for any loss or damage that they may have suffered as a result of any breach or breaches by the CNGO;
- (3) to reduce the risk of further breaches and to encourage the parties to co-operate with each other in the future management of the Protected Area; and
- (4) to monitor the parties' compliance with any directions that he may issue under one or more of these heads.

Rule 28 The Adjudicator shall post to a website created for the purpose:

- (1) not later than [] after he has informed the parties of it, a copy of his decision and his reasons together with any directions he may have issued to give effect to the decision
- (2) not later than [] thereafter, a report on the steps already taken and that remain to be taken to give effect to his decision.

Rule 29 The parties shall:

- (1) comply with any directions given by the Mediator or Adjudicator and take such other steps as may reasonably be required to ensure that the mediation or adjudication is conducted in a just and expeditious manner; and
- (2) be awarded any reasonable costs that they may thereby incur to the extent that the Mediator or Adjudicator considers it just and expedient to make such an award.

Part VIII: National law etc

Rule 30 For the avoidance of doubt no CNGO or Indigenous Community shall be required by the Code or by an Adjudicator to contravene any national or international law that may apply to it or to act in breach of any contract that it may have entered before it adopted the Code.