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This Land Knows Me: Indigenous Land Rights

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I once looked into the eyes of an old man from the Kalahari Desert in Botswana who mesmerized me with tales about the waving savannah grasses and the end less sky of his homeland and told me that he could never leave because the land knew him. The sentiment has been echoed by Richard Nerysoo of Fort McPherson in Canada's Northwest Territories, who explained that "being an Indian means saying the land is an old friend that your father knew, your grandfather knew -- your people have always known. If the land is destroyed, then we too are destroyed. If you people ever take our land, you will be taking our life."

One of the strongest threads of commonality running through the indigenous communities with whom we work is the need for security of land tenure as well as access to natural resources such as medicines and other forest products. From central Siberia to the Kalahari Desert to Native American communities in North America, the rhetoric of indigenous peoples is the same: we were put on this land by the creator and we are responsible for its stewardship. Many indigenous groups refer to their unique relationship with their particular traditional territory as "I belong to this land," as opposed to the classic Western articulation, "this land belongs to me." The statement is political and emotional as well as philosophical; it is the foundation of the indigenous worldview and informs the traditional way of life in its entirety. Unfortunately, the depth of this belief for traditional indigenous people has rarely been fully appreciated. Emphasis by indigenous people on collective ownership and an extremely long-term (seven generations) view of stewardship is generally at odds with Western/European conceptions that lead to, and actually encourage, short term exploitation of land and resources.

Indigenous people are particularly vulnerable to incursions into their traditional territory -- both land grabs and exploitation of natural resources -- because, 1) most indigenous communities have no legal or other counsel so it is relatively easy for government officials to persuade them to move, and 2) high biological diversity in their traditional territories makes them easy targets for strong corporate interests.

First Peoples Worldwide

First Peoples Worldwide (FPW) is the international program of the First Nations Development Institute, a Native American technical assistance and grantmaking organization located in Fredericksburg, Virginia. FPW's launch in 1997 was motivated by the situation of many indigenous groups around the world who were (and are) experiencing acute social and economic upheaval due to increased economic activity in their traditional territories. In many ways, indigenous people are on the front lines of the battle for the future. Indigenous rights to ancestral homelands, self-determination, intellectual property, livelihood, and culture are constantly threatened by inadequate government policies that allow multinational companies to undertake uncontrolled resource extraction and exploitation as a way of boosting foreign revenues, despite the risk of ecological disaster and social disgrace. The global village is getting smaller and technology is

exposing indigenous peoples to influences that tend to erode both their culture and language. Without an active campaign to protect them, the world's indigenous people are in danger in the next century of disappearing altogether. With them will go generations of indigenous knowledge, valuable medical research, vibrant cultures, and a way of looking at the world which is unique and infinitely sustainable. The threat they face is real.

Similar to our parent organization's work in the United States, FPW works with indigenous people around the world to increase their capacity to represent themselves and to assist them in securing rights in their traditional territories. By networking and sharing common experiences, First Peoples Worldwide believes that indigenous peoples themselves hold the key to a sustainable future. In our work, we look to traditional infrastructures, especially leadership and land tenure, and encourage the natural creativity and resourcefulness of indigenous peoples and their communities.

FPW's Objectives and Projects:

Facilitating and fostering the equitable participation of indigenous peoples in the resolution of environmental, legal, and economic issues. The overarching goal of our project in Southern Africa is to assist the San -- also known as the Khwe, Basarwa, or Bushmen -- in building local capacity to secure their traditional homelands. Our Strategy includes legal assistance to local indigenous groups and organizations (Lawyer's Reference Group on Indigenous Land Claims), extensive assessment of the legal history of San land tenure in Botswana and Namibia, and development of material on land rights in local languages. We have also undertaken a series of workshops entitled Land and Law, implemented in partnership with the Working Group of Indigenous Minorities in Southern Africa (WIMSA). The purpose of these workshops is to provide basic legal education directly to the San people; sessions include information regarding national constitutions, history of land tenure, democratic principles, and contemporary land legislations. FPW is formalizing workshops to create permanent training curricula and developing a second community legal education booklet for distribution in early 2001.

Assisting with providing the financial and technical assistance and resources necessary to strengthen and facilitate indigenous-controlled, culturally-appropriate development projects, programs, and intermediaries. Since 1997, FPW has been working with Australian Aboriginal leaders to establish the Indigenous Community Foundation (see Darren Godwell's article in this issue). The Foundation will provide grants and technical assistance to Aboriginal communities in order to encourage community-driven economic development. The mission is to promote and encourage indigenous ownership and control of assets while enhancing indigenous culture and values.

Last year, the Indigenous Community Foundation developed institutional funding guidelines that reflect its aspiration to be an agent for positive sustainable change in indigenous community development. They will begin providing start-up grants and working capital grants next year. Guidelines have been drafted to promote a new approach to indigenous development in partnership with many sectors, including corporations, nonprofit organizations, foundations, and the government.

Advocating for indigenous self-governance. Social investing is the act of integrating one's investment decisions, including pension plans, with one's social concerns. It represents the most direct way that individuals can bring their concern for indigenous people into the corporate boardrooms of the world's largest companies. In late 1999, FPW worked with our partner, Calvert Social Investment Fund, to create the first social investing screen that protects the rights and sovereignty of indigenous people. The screen developed by FPW and Calvert reflects internationally recognized rights and includes the following principles.

1. Respect land, sovereignty, and natural resource rights or traditional homelands of indigenous communities.
2. Respect cultural heritage as well as ceremonial and sacred indigenous sites.
3. Negotiate agreements transparently with independent observers present, and uphold the self-governance of indigenous communities.
4. Avoid exacerbating any tensions between indigenous communities and local or national governments.
5. Contribute to community-driven development and environmental management plans.

6. Hold ongoing consultations and meetings with indigenous communities and leaders in the area of operations.

7. Provide restitution and equitable compensation to indigenous peoples when any property, including intellectual property, has been taken from them.

We are encouraging other investment firms to adopt a social screen with similar criteria and have seen some success. KLD & Co., Inc., for example, has incorporated criteria from the Indigenous Social Screen into its Domini 400 Social Index of social-screened corporate stock. The possibility of a European launch with the U.K. Social Investment Forum and Henderson Investment in London is under discussion.

Building an indigenous network, information clearinghouse, and databank that includes information on indigenous self-governance and indigenous land rights. The First Peoples Worldwide Web site and our pilot project on land tenure and natural resource rights was launched in March 1999. It is located at www.firstpeoples.org and contains approximately 250 pages. Once fully developed, the Web site will contain up-to-date information on indigenous land and natural resource rights, culture, and self-governance.

In order to draw some of these seemingly unrelated strands together, we have been working with our partner organizations to develop an overall land tenure strategy focusing on the development process already in motion in communities. Tentatively called the Integrated Process for Land Tenure Security in order to highlight its focus on land tenure security, broadly defined, rather than land claims, the strategy incorporates customary law; traditional leadership structure; elements of culture, society, and economy; as well as sound legal advice. Our partners intend to use the strategy as an alternative to the classic land claim model based on litigation.

Our objective is to develop a process clearly outlines the roles of particular players, provides a basic framework to be followed by interested communities, encourages a more comprehensive approach to land rights issues, and provides a canvas against which progress on land tenure claims can be evaluated. The strategy takes into consideration both the lessons/best practices learned by indigenous peoples in other parts of the world as well as contemporary realities and unique circumstances of San communities in southern Africa.

In most land claims, the legal team is central to both the direction and the pace; the community is treated very much like a client. This is problematic because rarely does the community enjoy unanimous agreement or informed participation. Lawyers must consequently develop specialized approaches and skills in order to extract proper instructions from their clients. In our strategy, lawyers lead the land claim effort as part of the larger development process; communities thus have a greater chance of directing the pace and overall strategy, are able to build their own capacity, and become well-informed and active participants in the land rights movement.

Conclusion

About five years ago, I was sitting beside an Ojibway elder in a community meeting where a lawyer from the Canadian Department of Indian Affairs was explaining the federal trust responsibility for Indian Lands. Well into the carefully orchestrated speech, the elder leaned over and said, "How much land did he say the Europeans brought with them?"

The comment made me laugh at the time but I have never forgotten it. It speaks to the important perspective that we must keep in mind: indigenous people were here first and that means something -- socially, economically, and legally. The solution is not to discourage land claims, but to encourage more holistic, creative approaches that prepare indigenous people for the rocky road ahead and myriad challenges of the future. Contrary to popular opinion, land claims are not just like any other legal action. They have enormous power to divide communities and destroy futures. Just as the land itself is an integral part of the indigenous psyche, any efforts to regain or maintain the traditional territory of indigenous peoples must be found within the larger context of their lives.

FPW is determined to ensure that indigenous peoples are at the table when their future is being decided -- that they are receiving the support they need for their efforts to regain or retain land tenure and that their basic human rights are being respected by national governments. Our mistakes and the lessons that we have learned along our own rocky paths are perhaps the greatest gifts we can share. As a learned colleague once said: "As lawyers, we will always make mistakes, but we don't have to keep making the same ones."

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