

SECOND SUMMIT MEETING OF IBERO-AMERICAN HEADS OF STATE

Madrid, July, 23th and 24th, 1992

AGREEMENT ESTABLISHING THE FUND FOR THE DEVELOPMENT OF THE INDIGENOUS PEOPLES OF LATIN AMERICA AND THE CARIBBEAN

The High Contracting Parties:

Meeting in the City of Madrid, Spain, on the occasion of the Second Summit of the Ibero-American States on July 24, 1992;

Recalling the terms of the Universal Declaration of Human Rights, the International Agreement on Economic, Social and Cultural Rights and the International Agreement on Civil and Political Rights;

Considering the international rules set forth in the International Labour Organization's Convention on Indigenous and Tribal Peoples, adopted by the International Labour Organization in 1989;

Hereby adopt, in the presence of representatives of indigenous peoples of the region, the following AGREEMENT ESTABLISHING THE FUND FOR THE DEVELOPMENT OF THE INDIGENOUS PEOPLES OF LATIN AMERICA AND THE CARIBBEAN.

ARTICLE 1

PURPOSE AND FUNCTIONS

- 1.1 Purpose. The purpose of the Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean, hereinafter the "Indigenous Fund", is to establish a mechanism designed to support the self-development processes of the indigenous peoples, communities and organizations of Latin America and the Caribbean, hereinafter referred to as "Indigenous Peoples."

The term "Indigenous Peoples" shall be understood to mean those indigenous peoples who descend from populations that inhabited the country, or the geographic region to which the country belongs, during the period of the conquest or colonization of the region, or of the

establishment of the present state frontiers, and who, whatever their legal situation, retain all their own social, economic, cultural and political institutions, or part thereof. In addition, awareness of their indigenous identity shall be considered a fundamental criterion for determining the groups to whom the provisions of this Agreement shall apply.

The use of the term "Peoples" in this Agreement shall not be interpreted as having any implications whatsoever in regard to rights which may be inferred from this term under International Law.

1.2 Functions. In order to attain the objective set forth in paragraph 1.1 of this article, the Indigenous Fund shall have the following basic functions:

a) To provide a forum for dialogue for the achievement of the concerted formulation of development policies, technical assistance operations, and programs and projects of interest for the Indigenous Peoples, with the participation of the Governments of the States of the region, Governments of other States, financing institutions and the Indigenous Peoples themselves.

b) To channel financial and technical resources for the priority projects and programs agreed upon with the Indigenous Peoples, ensuring that they will contribute to create conditions conducive to the self-development of these Peoples.

c) To provide training and technical assistance resources to support institutional strengthening, development of management capacity, human resource formation, and information and research capabilities for Indigenous Peoples and their organizations.

ARTICLE 2

MEMBERS AND RESOURCES

2.1 Members. Members of the Indigenous Fund shall be such States as deposit the ratification instrument with the General Secretariat of the United Nations Organization, in accordance with their internal constitutional requirements and with the provisions of Article 14.1 of this Agreement.

2.2 Resources. The resources of the Indigenous Fund shall consist of the Contributions of the Member States, donations and other assistance from other States, multilateral, bilateral and national agencies of a public or private nature and from institutional donors, and the net income generated by the activities and investments of the Indigenous Fund.

2.3 Contribution Instruments. The Contribution Instruments shall be protocols signed by each Member State to establish its respective commitments to contribute resources to form the

capital of the Indigenous Fund, in accordance with paragraph 2.4 below. Other donations or assistance shall be governed by the provisions of Article 5 of this Agreement.

- 2.4 Nature of the Contributions. Contributions to the Indigenous Fund may be made in foreign exchange, local currency, technical assistance and in kind, in accordance with the rules established by the General Assembly. Contributions in local currency shall be subject to value maintenance and exchange rate conditions.

ARTICLE 3

ORGANIZATIONAL STRUCTURE

- 3.1 Organs of the Indigenous Fund. The organs of the Indigenous Fund are the General Assembly and the Board of Directors.

3.2 General Assembly.

- a) Composition. The General Assembly shall be composed of:
- (i) one delegate from each of the Member State, duly accredited by the respective Government; and
 - (ii) one delegate of the Indigenous Peoples of each State of the region that is a Member of the Indigenous Fund, duly accredited by his respective Government, after consultations carried out with the Indigenous Peoples' organizations of that State.
- b) Decisions.
- (i) Decisions shall be adopted by the unanimous affirmative vote of the delegates of the States of the region that are Members of the Indigenous Fund, together with a majority of affirmative votes of the representatives of the other Member States and a majority of affirmative votes of the delegates of the Indigenous Peoples.
 - (ii) In matters that affect the Indigenous Peoples of one or more countries, the affirmative vote of their delegates shall also be required.
- c) Regulations. The General Assembly shall issue its By-laws and such other regulations as it deems necessary for the functioning of the Indigenous Fund.

d) Functions. The functions of the General Assembly shall include, without being limited to:

- (i) the formulation of the general policy of the Indigenous Fund and the adoption of such measures as are necessary for the accomplishment of its objectives;
- (ii) the approval of the basic criteria for preparation of the plans, projects and programs to be supported by the Indigenous Fund;
- (iii) the approval of membership status in accordance with the stipulations of this Agreement and with the rules established by the General Assembly;
- (iv) the approval of the annual program and budget, and of the periodic statements of account, of the resources of the Indigenous Fund;
- (v) the election of the members of the Board of Directors to which reference is made in paragraph 3.3, and the delegation to said Board of the faculties necessary for the functioning of the Indigenous Fund;
- (vi) the approval of the technical and administrative structure of the Indigenous Fund and the appointment of its Technical Secretary;
- (vii) the approval of special agreements to enable countries that are not Members, as well as those public and private organizations that wish to do so, to cooperate with, or participate in, the Indigenous Fund;
- (viii) the approval of any amendments to the Agreement Establishing the Indigenous Fund, and their submission to the Members for ratification, when applicable; and
- (ix) the termination of the operations of the Indigenous Fund and the appointment of liquidators.

e) The General Assembly shall meet in regular session once per year, and in extraordinary session as often as may be necessary, on its own initiative or at the request of the Board of Directors, in accordance with the procedures established by the General Assembly.

3.3 Board of Directors

a) Composition. The Board of Directors shall be composed of nine members elected by the General Assembly, who shall represent, in equal parts, the Governments of the States of the region that are Members of the Indigenous Fund, the Indigenous Peoples of those same Member States and the Governments of the other Member States. The term of office of the members of the Board of Directors shall be two years, with appropriate arrangements for

rotation.

b) Decisions.

- (i) Decisions shall be adopted by the unanimous affirmative vote in favor of the delegates of the States of the Region that are Members of the Indigenous Fund, together with a majority of affirmative votes of the representatives of the other Member States and a majority of affirmative votes of the delegates of the Indigenous Peoples.
- (ii) Decisions of the Board of Directors that affect a particular country shall also require, for their validity, the approval of the Government of the State concerned and of the beneficiary Indigenous People, through the most appropriate mechanisms.

c) Functions. In accordance with the rules, regulations and guidelines approved by the General Assembly, the Board of Directors shall perform the following functions:

- (i) propose to the General Assembly such complementary rules and regulations as are required for the fulfillment of the objectives of the Indigenous Fund, including the By-laws of the Board;
- (ii) appoint one of its members as Chairman, by means of the voting mechanism set forth in paragraph 3.3(b) above;
- (iii) adopt the necessary measures for the implementation of this Agreement and of the decisions of the General Assembly;
- (iv) evaluate the technical and administrative needs of the Indigenous Fund and propose the corresponding measures to the General Assembly;
- (v) administer the resources of the Indigenous Fund and authorize the contracting of loans;
- (vi) submit to the consideration of General Assembly for the proposed annual program and budget, and the periodic statements of account of the resources of the Indigenous Fund;
- (vii) consider and approve programs and projects that are eligible to receive assistance from the Indigenous Fund, in accordance with its objectives and rules;
- (viii) arrange and provide technical assistance and the necessary support for the preparation of the projects and programs;

- (ix) promote and establish mechanisms for concerted action by Members of the Indigenous Fund, cooperating entities and beneficiaries;
- (x) propose to the General Assembly the appointment of the Technical Secretary of the Indigenous Fund;
- (xi) temporarily suspend the operations of the Indigenous Fund until the General Assembly has an opportunity to examine the situation and take appropriate measures;
- (xii) exercise such other faculties as this Agreement confers upon it and perform the functions assigned to it by the General Assembly.

d) Meetings. The Board of Directors shall meet at least three times per year, in April, August and December, and in extraordinary session whenever it deems necessary.

ARTICLE 4

ADMINISTRATION

4.1 Technical and Administrative Structure.

a) The General Assembly and the Board of Directors shall determine and establish the technical and administrative structure of the Indigenous Fund, in accordance with Articles 3.2(d)(vi) and 3.3(c) (iv) and (x). This structure, hereinafter referred to as the Technical Secretariat, shall consist of highly qualified staff in terms of professional training and experience whose number shall not exceed ten: six professional and four administrative staff. Additional personnel needs for projects may be met through the hiring of temporary personnel.

b) The General Assembly, if it considers necessary, may expand or adjust the composition of the Technical Secretariat.

c) The Technical Secretariat shall function under the direction of a Technical Secretary appointed in accordance with the provisions referred to in subparagraph (a) above.

4.2 Administration Contracts. The General Assembly may authorize the signature of administration contracts with entities possessing the resources and experience required to perform the technical, financial and administrative management of the resources and activities of the Indigenous Fund.

ARTICLE 5

COOPERATING ENTITIES

5.1 Cooperation with Entities that are not Members of the Indigenous Fund.

The Indigenous Fund may sign special agreements, approved by the General Assembly, to enable States that are not Members, as well as public and private, local, national and international organizations, to contribute to the capital of the Indigenous Fund, to participate in its activities, or both.

ARTICLE 6

OPERATIONS AND ACTIVITIES

6.1 Organization of Operations. The Indigenous Fund shall organize its operations on the basis of a classification of programs and projects by areas, in order to facilitate the concentration of administrative and financial efforts and programming by means of periodic resource allocations, to viabilize the accomplishment of the concrete objectives of the Indigenous Fund.

6.2 Beneficiaries. The programs and projects supported by the Indigenous Fund shall benefit directly and exclusively the Indigenous Peoples of the Latin American and Caribbean States that are Members of the Indigenous Fund or have signed special agreements with said Fund to enable the Indigenous Peoples of their countries to participate in the activities of the Fund, in accordance with article 5.

6.3 Eligibility Criteria and Priority. The General Assembly shall adopt specific criteria that will make it possible, in an interdependent manner and taking into account the diversity of the beneficiaries, to determine the eligibility of the prospective beneficiaries of the operations of the Indigenous Fund and to establish the priority of programs and projects.

6.4 Financing Conditions.

a) Taking into account the diverse and particular characteristics of the eventual beneficiaries of the programs and projects, the General Assembly shall establish flexible guidelines to be used by the Board of Directors to determine the financing terms and establish the conditions for execution of each program and project, in consultation with those concerned.

b) In accordance with the above-mentioned criteria, the Indigenous Fund shall grant nonreimbursable resources, loans, guarantees and utilize other appropriate financing mechanisms, individually or in combinations.

ARTICLE 7

EVALUATION AND MONITORING

- 7.1 Evaluation of the Indigenous Fund. The General Assembly shall periodically evaluate the functioning of the Indigenous Fund as a whole, on the basis of such criteria and using such means as it considers appropriate.
- 7.2 Evaluation of Programs and Projects. The progress of the programs and projects shall be evaluated by the Board of Directors. Special consideration shall be given to the requests submitted in this regard by the beneficiaries of such programs and projects.

ARTICLE 8

WITHDRAWAL OF MEMBERS

- 8.1 Right to Withdraw. Any Member State may withdraw from the Indigenous Fund by giving written notification of its intention to the Chairman of the Board of Directors, who shall notify the General Secretariat of the United Nations Organization. The withdrawal shall take effect one year after the date of receipt of said notification.
- 8.2 Settlement of Accounts.
- a) In the event of the withdrawal of a Member State, the Contributions made by such Member State to the Indigenous Fund shall not be returnable.
- b) A Member State that withdraws from the Indigenous Fund shall remain liable in respect of sums owed to the Indigenous Fund and obligations assumed vis-à-vis the Fund prior to the date of termination of its membership.

ARTICLE 9

TERMINATION OF OPERATIONS

- 9.1 Termination of Operations. The Indigenous Fund may terminate its operations by decision to that effect by the General Assembly, which shall appoint liquidators, determine the payment of debts and arrange the distribution of assets on a proportional basis among its Members.

ARTICLE 10

JURIDICAL PERSONALITY

10.1 Legal Status.

a) The Indigenous Fund shall have juridical personality and full capacity to:

- (i) enter into contracts;
- (ii) purchase and dispose of personal and real property;
- (iii) accept and grant loans and grants, give guarantees, purchase and sell securities, invest such funds as are not committed for its operations and perform all financial transactions necessary for the accomplishment of its purpose and functions;
- (iv) institute judicial or administrative proceedings and appear in court;
- (v) perform all other actions required for the performance of its functions and the accomplishment of the objectives of this Agreement.

b) The Indigenous Fund shall exercise these faculties in accordance with the legal requirements of the Member State in whose territory it is carrying out any operations and activities.

ARTICLE 11

IMMUNITIES, EXEMPTIONS AND PRIVILEGES

11.1 Grant of Immunities. The Member States shall adopt, in accordance with their own legal systems, such measures as are necessary to confer upon the Indigenous Fund the immunities, exemptions and privileges required for the accomplishment of its objectives and the performance of its functions.

ARTICLE 12

AMENDMENTS

12.1 Amendment of the Agreement. This Agreement may only be amended with the unanimous consent of the General Assembly, subject, when required, to ratification by the Member

States.

ARTICLE 13

GENERAL PROVISIONS

- 13.1 Headquarters of the Fund. The Indigenous Fund shall have its headquarters in the city of La Paz, Bolivia.
- 13.2 Depositaries. Each Member State shall designate its Central Bank as depositary so that the Indigenous Fund may keep its available resources in the currency of that Member State and other assets of the institution. In the event that a Member State does not have a Central Bank, it shall designate, in agreement with the Indigenous Fund, some other institution for this purpose.

ARTICLE 14

FINAL PROVISIONS

- 14.1 Signature and Acceptance. This Agreement shall be deposited with the General Secretariat of the United Nations Organization, where it shall remain open to receive the signatures of the representatives of the Governments of the States of the region and of other States which wish to become Members of the Indigenous Fund.
- 14.2 Entry into Force. This Agreement shall enter into force when the ratification instrument has been deposited by at least three States of the region, in accordance with paragraph 14.1 of this article.
- 14.3 Denunciation. Any Member that has ratified this Agreement may denounce it by giving written notification to the Secretary-General of the United Nations Organization. Such denunciation shall not take effect until one year after the date of its registration.
- 14.4 Commencement of Operations.
- a) The Secretary-General of the United Nations Organization shall convene the first session of the General Assembly of the Indigenous Fund as soon as this Agreement has entered into force pursuant to paragraph 14.2 of this article.
- b) In its first session, the General Assembly shall take the necessary actions to appoint the members of the Board of Directors, pursuant to paragraph 3.3(a) of article 3 of this Agreement, and to determine the date on which the Indigenous Fund shall commence its operations.

ARTICLE 15

TRANSITORY PROVISIONS

- 15.1 Interim Committee. Once this Agreement has been signed by five States of the region, and without any obligations being generated for the States that have not ratified it, an Interim Committee with composition and functions similar to those described for the Board of Directors in paragraph 3.3 of article 3 of this Agreement shall be established.
- 15.2 Under the direction of the Interim Committee, there shall be established a Technical Secretariat, having the characteristics set forth in paragraph 4.1 of article 4 of this Agreement.
- 15.3 The activities of the Interim Committee and of the Technical Secretariat shall be financed with voluntary contributions from the States that have signed this Agreement, together with contributions from other States and entities, by means of technical cooperation and such other forms of assistance that the States or other entities can arrange with international organizations.

DONE in the City of Madrid, Spain, in one single original dated the 24th day of July, 1992, in Spanish, Portuguese and English texts of equally validity.

POR ARGENTINA

GUIDO JOSE MARIO DI TELLA
Ministro de Relaciones Exteriores

POR BOLIVIA

RONALD MCLEAN ABAROA
Ministro de Relaciones Exteriores

POR BRASIL

CELSO LAFER
Ministro das Relações Exteriores

POR COLOMBIA

NOEMI SANIM
Ministra de Relaciones Exteriores

POR COSTA RICA

BERND NIEHAUS QUESADA
Ministro de Relaciones Exteriores

POR CUBA

RICARDO ALARCON DE QUESADA
Ministro de Relaciones Exteriores

POR CHILE

ENRIQUE SILVA CIMMA
Ministro de Relaciones Exteriores

POR ECUADOR

DIEGO CORDOVEZ
Ministro de Relaciones Exteriores

POR EL SALVADOR

JOSE MANUEL PACAS CASTRO
Ministro de Relaciones Exteriores

POR ESPAÑA

JAVIER SOLANA MADARIAGA
Ministro de Asuntos Exteriores

POR GUATEMALA

GONZALO MENENDEZ PARK
Ministro de Relaciones Exteriores

POR HONDURAS

MARIO CARIAS ZAPATA
Ministro de Relaciones Exteriores

POR MEXICO

FERNANDO SOLANA MORALES
Secretario de Relaciones Exteriores

POR NICARAGUA

ERNESTO JOSE LEAL SANCHEZ
Ministro de Relaciones Exteriores

POR PANAMA

JULIO LINARES
Ministro de Relaciones Exteriores

POR PARAGUAY

ALEXIS M. FRUTOS VAESKEN
Ministro de Relaciones Exteriores

POR PORTUGAL

JAO DE DEUS PINHEIRO
Ministro dos Negócios Estrangeiros

POR REPUBLICA DOMINICANA

JUAN ARISTIDES TOVARES GUZMAN
Ministro de Relaciones Exteriores

POR URUGUAY

HECTOR GROS ESPIELL
Ministro de Relaciones Exteriores

Madrid, July 24th, 1992