

MODEL CODE FOR THE RECLAMATION, PROTECTION AND PRESERVATION OF AFRICAN LAND, TRADITIONAL KNOWLEDGE AND MINERAL RESOURCES

(Note to Public: The causes of devastating problems that afflict large regions of Africa can usually be traced to external sources. The continent's vast natural and human wealth have been objects of obsession by non-Africans for at least five centuries. The slave trade along Africa's coastal regions was followed in short order by European penetration into Africa's interior, allowing the slave industry to expand its reach. Eventually, the various European countries began to compete for access to, and domination of Africa's natural resources such as gold, diamonds, and ivory. This "scramble for Africa" prompted the infamous Berlin Conference of 1884 - 85 where representatives of most European countries carved Africa into regions and agreed to peacefully and amicably share domination of the African continent. Britain, France, Belgium, Portugal and other European countries transformed their regions into colonies that were exploited in every way for the benefit of the European "mother" countries. As the profitability of slavery declined, the interest in Africa's natural resources increased. Dutch, Portuguese and British settlers identified land itself as a natural resource to dominate and exploit in Africa's southern regions.

The extent of African resistance to these campaigns of domination and exploitation is frequently ignored or minimized. However, even in the many instances when Africans were overwhelmed by Europe's firearms and broad world view, Africans never stopped fighting. This resistance was so protracted and determined that by the late 1950s, Europe began to recognize that colonialism in its original form could not be sustained for any significant period into the future. Although one African country after another began to win nominal independence throughout the 1960s and into the 1970s, western economic interests were unwilling to surrender their access to Africa's wealth. The International Monetary Fund and the World Bank began to extend "loans" to impoverished African countries that had been severely underdeveloped during the colonial era. The conditions of these loans were generally designed to ensure that western corporations had continuing access to African resources, even if this required the reduction or elimination of social services and the most basic human necessities. The minority settler regimes of southern Africa proved to be the most stubborn in the face of African demands for independence and self-determination. Even in the aftermath of successful liberation wars in the southern countries, European settlers have clung tenaciously to the land.

The prospect of reclaiming Africa's resources seems to many to be at best a daunting challenge, and at worst an impossible fantasy. Although the National Conference of Black Lawyers (NCBL) is convinced of the inevitability of African liberation, self-determination and redemption, the organization is aware of the ongoing efforts to deny Africa's people a vision of not only what Africa can be, but also the feasibility of making the vision a reality. It is with this in mind that NCBL has developed this model code. Model codes are frequently tailored by lawyers and legislators to meet the particular needs of their constituents as they craft new laws. However, it is not anticipated that this model code will be seriously considered for enactment by lawyers and legislators. It is hoped that the everyday people of Africa will have opportunities to examine it, discuss it and thereby develop a vision for how to loosen the foreign grip on resources that by right belong to Africa's indigenous population. NCBL therefore encourages the wide dissemination of this code throughout Africa and also the African Diaspora where the

descendants of the continent's kidnapped sons and daughters also have more to gain from a truly self-sufficient, self-sustaining Africa than even they know. –Mark P. Fancher, Chair, NCBL International Affairs Section -)

Preamble

Whereas, this country was subjected to an extended period of colonization by [], which led to the interruption and reversal of this nation's economic and political development; and

Whereas, the colonization of this country was part of a global, systemic effort by Europe to facilitate Europe's industrialization; and

Whereas, the colonization of this country was inextricably linked to the colonization of the rest of the African continent; and

Whereas, European colonizing countries, by force of arms, fraud, deception and other illegal and unscrupulous means, extracted mineral resources from this country, and permanently deprived this country's indigenous population of the occupation and use of the most arable land; and

Whereas, the wealth generated from this country's mineral resources and land was exported to the colonizing countries without any residual benefits for this country and other African countries; and

Whereas, the actions taken by colonizing countries to facilitate exploitation of their colonies' mineral resources and land in many cases caused permanent damage to this country and otherwise limited the capacity of this country to develop economically; and

Whereas, the Trans-Atlantic slave trade, that began in or about the 15th Century, and that resulted in the enslavement of an inestimable number of Africans who were relocated by force to various regions in the Western Hemisphere, caused Africa to be depopulated to a degree that the impact of colonialism was exacerbated; and

Whereas, settlers and private foreign business entities established operations in this country during the colonial period that have continued uninterrupted until the date of this Act; and

Whereas, the business operations established by the [] government, settlers and private foreign business entities during the colonial period have, in many cases resulted in the exploitation of this country's land, traditional knowledge and mineral resources to the disadvantage of the indigenous population; and

Whereas, during the post-colonial period, settlers and private foreign business entities have continued exploitative practices that include, but are not limited to: domination of this country's most arable land; overseas marketing of traditional knowledge without compensation to indigenous originators; mining and marketing of petrochemicals and minerals without adequate compensation to the State and the indigenous population; and

Whereas, since this country gained its independence, certain individuals and clans who are part of the indigenous population have replicated, for their own benefit, certain exploitative practices of the colonizing country; and

Whereas, the full and proper development of this country requires the control of its natural wealth by all members of the indigenous population,

NOW THEREFORE BE IT ENACTED:

Section A. – Fossil Fuels and Minerals

1. All fossil oils/fuels and petrochemicals, natural gas and mineral resources that shall naturally occur within the boundaries of this country shall be the exclusive property of the state.

2. The state shall establish and maintain the "Natural Resource Corporation (NRC)" for purposes of exploration, drilling, mining, refining and sale of naturally occurring fuels and minerals.

3. The NRC shall be governed by a nine member board of directors. Members of the board of directors shall be citizens of this country by birth and shall be selected at random and by lottery by the Ministry of [] to serve a single one year term. Each member of the board of directors shall meet the following requirements:

a.) He/she shall be at least 21 years of age;

b.) He/she shall not have a criminal conviction for any offense involving theft or dishonesty;

c.) He/she shall have completed at least three years of secondary education

d.) He/she shall not have as their primary occupation, any of the occupations listed in Appendix A.

4. The NRC shall maintain a full-time compensated staff that shall assist the work of the board of directors. To that end, the staff shall perform for the board of directors tasks that shall include, but not be limited to: research, analysis, counsel, and all tasks necessary for the establishment and implementation of policies set by the board of directors. The staff shall consist of an executive director and such other personnel as may be necessary for the work of the corporation. All employers shall be required to accommodate those selected for service on the board of directors by granting leave time as may be necessary. Employers may request from the state compensation for any financial losses directly resulting from an employee's service on the board of directors.

5, It shall be a felony, punishable by a minimum fine of [] and incarceration for a period of not less than [], for any member of the board of directors to accept a payment, gift or any thing of value from any individual, foreign government, or corporation, in exchange for any act in connection with the work of the NRC.

6. The board of directors shall meet monthly to consider the recommendations of the corporation's staff and to make decisions regarding matters that shall include, but not be limited to the following:

- a) natural resource exploration;
- b) drilling and mining;
- c) refining;
- d) marketing;
- e) trade and sales;
- f) accounting.

7. The board of directors shall direct that all revenue generated by the sale of natural resources be deposited in the national treasury for purposes of financing health, education and infrastructure development projects for discrete regions of the country with indigent populations that exceed 50 percent of the general population. Indigence shall be defined by current United Nations poverty indexes. Appropriation of any portion of the national treasury for ownership or personal use by any private individual or entity is strictly prohibited and shall be a felony punishable by a minimum fine of [] and incarceration for a period of not less than [].

8. The board of directors shall be authorized to enter into contracts with domestic and foreign individuals and business entities for services that may include, but not be limited to: exploration; drilling; mining; and refining. No individual or business entity that shall become a party to a contract under this section shall receive compensation that shall exceed amounts established in advance by the board of directors and that shall be approved by the Parliament for specified services. The compensation scale shall be reviewed annually by the board of directors, and it shall be appropriately adjusted as necessary to reflect changes in the world economy.

9. Private domestic and foreign individuals and corporations that have maintained natural resource operations in this country prior to the enactment of this Act shall have a period of five (5) years from the date of enactment of this Act to wind down and conclude all such operations. The state shall have authority to seize and permanently retain operations maintained by individuals and entities that

unlawfully remain in operation after the five year period of transition. Licensing terms that governed such operations prior to the enactment of this Act shall remain in effect during the five year period of transition. If any private, domestic or foreign individual or entity shall fail to comply with licensing terms; or, if any such individual or entity shall engage in acts intended to damage, destroy, disrupt or in any way detrimentally affect the natural resources of this country, the state shall serve a notice on such individual or entity that specifies the unlawful conduct and that commands that such conduct cease forthwith. The state shall have authority to seize and permanently retain operations maintained by individuals and entities that, after receipt of a required notice, fail to comply with this section.

10. A special standing commission shall be established for the purpose of evaluating claims for compensation for resources, materials, equipment, facilities and other privately owned assets that may come into the possession of the state by way of seizure or otherwise by operation of this Act. The commission shall consist of five members. Two members shall be appointed by the Prime Minister. Three members shall be appointed by the Parliament pursuant to procedures to be established by that body.

11. Those making claims for compensation shall investigate and disclose to the Special Commission all records of any kind that may be in the claimant's possession, or that may be reasonably accessible to the claimant, that may relate in any way to any past or present involvement, directly or indirectly with individuals, governments, organizations, institutions or entities of any kind that generated or received pecuniary income incident to involvement in the colonization of this country's territory, or the Trans-Atlantic slave trade.

12. In evaluating claims for compensation, the Special Commission shall make unjust enrichment the central focus of its inquiry, and shall decline to award compensation in any amount to any claimant who has either generated or received pecuniary income (directly or indirectly) incident to involvement in the colonization of this country's territory or the Trans-Atlantic slave trade that exceeds or is equivalent to the value of the claim asserted. In assessing the relative values of claims and past income, the Special Commission shall make appropriate adjustments that take into account historical changes in the world economy.

13. The Special Commission shall have authority to deny compensation to claimants who have been unjustly enriched by virtue of past practices unrelated to colonization and the Trans-Atlantic slave trade. Past practices of claimants that might warrant the denial of claims might include, but not be limited to: racial discrimination, exploitative labor practices, unlawful conduct, and unfair trade practices. A challenge to a claim on such grounds shall be the subject of a hearing that affords to the claimant full rights to due process.

14. The Special Commission shall have authority to determine that past practices of a claimant caused unjust enrichment of a value that exceeds the value of the asserted claim, and that the claimant shall be required to make restitution to the national treasury of an appropriate amount. A demand for restitution shall be the subject of a hearing that affords the claimant full rights to due process.

Section B. – Traditional Knowledge

15. This section adopts and incorporates the "OAU/AU African Model Legislation for the Protection of The Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources" (hereinafter "African Model Legislation") that has been codified at []

16. Pursuant to §§ 58 (vi), 64 and 65 of the African Model Legislation, a national information system is hereby established that shall be called "The National Registry and Resource Center for Indigenous Knowledge." Its purpose shall be to:

- a) investigate, identify and document cultural expressions, scientific observations and theories, medicines and medical procedures, folklore, knowledge of plant and animal genetic resources, and traditional knowledge of any type that has been independently discovered or created by indigenous residents of this country; and
- b) to provide information and assistance to indigenous individuals and communities that seek registration and protection of all forms of indigenous knowledge.

17. The registry and resource center shall employ a fully-compensated staff that shall consist of an Executive Director and all other necessary personnel.

18. The registry and resource center shall invite inquiries from intellectual property registration authorities of all countries regarding pending applications for patents, copyrights, trademarks, etc., and full assistance shall be provided by the registry and resource center to any authorities who seek to verify the contents of any certificates of origins that they may have received from applicants.

19. The registry and resource center shall, to the extent possible, monitor on an international scale the registration of intellectual property, and when necessary and feasible submit inquiries and challenges concerning patents, copyrights and other forms of registration for intellectual property that has been previously registered in this country as discoveries or creations of indigenous individuals and communities.

20. Any individual or entity that knowingly uses any registered indigenous discovery or creation without proper authorization, and without having properly compensated the originator shall commit a [designate class of criminal offense], and shall be liable for a fine of \$ [].

21. The courts of equity shall have jurisdiction over restitution and reparations claims by indigenous persons against foreign individuals and entities doing business in this country. When such claims assert that the historical use and exploitation of particular indigenous discoveries and creations by foreign individuals and entities resulted in their unjust enrichment, appropriate judgments may be entered.

22. If there has been a judicial determination that tangible assets of any foreign individual or entity that are physically located in this country are the proceeds, or the product of proceeds, of the unauthorized use of indigenous discoveries or creations, they shall be subject to seizure by the State after proper notice to the title holder or putative owner.

Section C. – Land

23. This country's customary laws and practices involving collective title and usufruct interests in the real property of this country are hereby incorporated as part of this Act and shall govern all land claims that have their origins prior to [date], the date of this country's independence.

24. All claims to land by all individuals and entities not indigenous to this country, and that have their origins in that period when this country was subjected to colonization are hereby void.

25. Any individual or entity whose claim to land has been rendered void by section [] of this Act shall forthwith surrender possession of such real property and all improvements thereon to the Ministry of []. An individual or entity affected by this section may apply for authorization to retain title and possession of land and improvements by filing a petition with the Standing Commission on Land Reform. All petitions must contain, at a minimum, the following elements:

- a) All records, correspondence, data, instruments, and documents of any kind that may be in the petitioner's possession, or that may be reasonably accessible to the petitioner, that may relate in any way to the petitioner's, or any of the petitioner's predecessors'

contact with local colonial authorities, or the colonizing country and/or its representatives;

b) A fully documented account of the manner in which the petitioner acquired the real property, including, where possible, copies of all instruments of conveyance, and any other documents or records that provide evidence of the circumstances of acquisition and planned usage;

c) A fully documented account of the history of usage of the property from the earliest date that such information is available to the present. This account shall set forth any known details of the terms of employment of any indigenous persons who rendered labor or services on or for the land, or for the benefit of the landowner, and a description of the history of any use of surface or subterranean naturally occurring resources such as timber, minerals or petrochemicals.

26. Real property that has not been voluntarily surrendered, and which has not been exempted from state ownership pursuant to section [] shall be seized.

27. Individuals and entities that have lost title to real property pursuant to this Act shall be entitled to submit claims for compensation to the Standing Commission on Land Reform.

28. Those making claims for compensation shall investigate and disclose to the Standing Commission all records of any kind that may be in the claimant's possession, or that may be reasonably accessible to the claimant, that may relate in any way to any past or present involvement, directly or indirectly with individuals, governments, organizations, institutions or entities of any kind that generated or received pecuniary income incident to involvement in the colonization of this country's territory, or the Trans-Atlantic slave trade.

29. In evaluating claims for compensation, the Standing Commission shall make unjust enrichment the central focus of its inquiry, and shall decline to award compensation in any amount to any claimant who has either generated or received pecuniary income (directly or indirectly) incident to involvement in the colonization of this country's territory or the Trans-Atlantic slave trade that exceeds or is equivalent to the value of the claim asserted. In assessing the relative values of claims and past income, the Standing Commission shall make appropriate adjustments that take into account historical changes in the world economy.

30. The Standing Commission shall have authority to deny compensation to claimants who have been unjustly enriched by virtue of past practices unrelated to colonization and the slave trade. Past practices of claimants that might warrant the

denial of claims might include, but not be limited to: racial discrimination, exploitative labor practices, unlawful conduct, and unfair trade practices. A challenge to a claim on such grounds shall be the subject of a hearing that affords to the claimant full rights to due process.

31. The Standing Commission shall have authority to determine that past practices of a claimant caused unjust enrichment of a value that exceeds the value of the asserted claim, and that the claimant shall be required to make restitution to the national treasury of an appropriate amount. A demand for restitution shall be the subject of a hearing that affords the claimant full rights to due process.

32. All citizens of this country shall be eligible for a single grant of non-exempt seized and surrendered real property in the possession of the State. Real property shall be re-distributed to citizens and prospective citizens of this country, subject to the following conditions:

a) No individual or entity may receive a grant of real property that exceeds [] hectares. Any individual or entity receiving a real property grant by fraud or by proxy that exceeds the [] hectare limit shall be guilty of a [grade of crime] and subject to a fine of \$[]. All real property granted to such individual or entity shall be re-claimed by the State.

b) The planned usage of any land shall be fully disclosed to the Standing Commission on Land Reform at the time of conveyance. Any changes in usage shall be immediately reported to the Standing Commission.

33. The Ministry of Agriculture shall establish and maintain The Farming Resource Center to provide training and assistance to land grantees who have no farm management experience, and to all other persons who request expert agricultural assistance.