

# DRAFT

Analysis of the Maine Implementing Act's (30 MRSA §6201 et. seq.) Conformance with the Standards Delineated in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)

Maine Indian Tribal-State Commission

## **30 §6202. LEGISLATIVE FINDINGS AND DECLARATION OF POLICY**

**Statutory language or reference in conflict:** *The Houlton Band of Maliseet Indians and its lands will be wholly subject to the laws of the State.*

Conflicts with UNDRIP Articles:

### **Article 2**

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

**Source of conflict:** HBMI not equal to the Passamaquoddy Tribe and Penobscot Nation, parties to the same agreement.

### **Article 3**

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

**Source of conflict:** HBMI not free to determine their political status. See MIA sections 6204, 6206-A. Section 6206 which protects internal tribal matters does not apply to the HBMI.

### **Article 4**

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

**Source of conflict:** HBMI do not enjoy full autonomy or self-government. See MIA sections 6204, 6206-A. Section 6206 which protects internal tribal matters does not apply to the HBMI.

### **Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Source of conflict:** HBMI do not have unfettered freedom to maintain and strengthen their distinct political, legal, economic, social and cultural institutions. See MIA sections 6204, 6206-

A. Section 6206 which protects internal tribal matters does not apply to the HBMI. They are also precluded from managing fish and wildlife resources on their lands as section 6207 does not apply to the HBMI.

#### **Article 19**

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

**Source of conflict:** The Towns of Houlton and Littleton and State of Maine have a mixed record of consulting and cooperating with the HBMI on legislative or administrative measures that may affect the Tribe. Local and state governments do not seek HBMI consent before acting.

#### **Article 26**

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

**Source of conflict:** See MIA sections 6204, 6206-A. The HBMI are also precluded from managing fish and wildlife resources on their lands as section 6207 does not apply to the Tribe.

#### **Article 32**

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

**Source of conflict:** See MIA sections 6204, 6206-A. The HBMI are also precluded from managing fish and wildlife resources on their lands as section 6207 does not apply to the Tribe. Other governments regularly take actions that affect Maliseet territories or resources without receiving their free, prior, and informed consent.

#### **Article 34**

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases

where they exist, juridical systems or customs, in accordance with international human rights standards.

**Source of conflict:** See MIA sections 6204, 6206-A. The HBMI are also precluded from operating their own tribal school committee as section 6214 does not apply to the Tribe.

### **30 §6203. DEFINITIONS**

**5. Passamaquoddy Indian Reservation.** ....The "Passamaquoddy Indian Reservation" includes those lands which have been or may be acquired by the Passamaquoddy Tribe within that portion of the Town of Perry which lies south of Route 1 on the east side of Route 190 and south of lands now owned or formerly owned by William Follis on the west side of Route 190, provided that no such lands may be included in the Passamaquoddy Indian Reservation until the Secretary of State receives certification from the treasurer of the Town of Perry that the Passamaquoddy Tribe has paid to the Town of Perry the amount of \$350,000, provided that the consent of the Town of Perry would be voided unless the payment of the \$350,000 is made within 120 days of the effective date of this section. Any commercial development of those lands must be by approval of the voters of the Town of Perry with the exception of land development currently in the building stages.

**Statutory language or reference in conflict:** *Any commercial development of those lands must be by approval of the voters of the Town of Perry with the exception of land development currently in the building stages.*

Conflicts with UNDRIP Articles:

#### **Article 23**

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

**Source of conflict:** §5 requires Sipayik to seek approval of Perry voters before undertaking any commercial development.

#### **Article 26**

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

**Source of conflict:** §§5 requires Sipayik to seek approval of Perry voters before undertaking any commercial development.

### **30 §6204. LAWS OF THE STATE TO APPLY TO INDIAN LANDS**

Except as otherwise provided in this Act, all Indians, Indian nations, and tribes and bands of Indians in the State and any lands or other natural resources owned by them, held in trust for them by the United States or by any other person or entity shall be subject to the laws of the State and to the civil and criminal jurisdiction of the courts of the State to the same extent as any other person or lands or other natural resources therein. [1979, c. 732, §§ 1, 31 (NEW).]

**Statutory language or reference in conflict:** Entire section

Conflicts with UNDRIP Articles:

#### **Article 3**

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

**Source of conflict:** Section 6204 says laws of the State shall apply and Tribes are subject to the civil and criminal jurisdiction of the courts of the State except in certain instances stated in MIA.

#### **Article 4**

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

**Source of conflict:** Section 6204 says laws of the State shall apply and Tribes are subject to the civil and criminal jurisdiction of the courts of the State except in certain instances stated in MIA.

#### **Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Source of conflict:** Section 6204 says laws of the State shall apply and Tribes are subject to the civil and criminal jurisdiction of the courts of the State except in certain instances stated in MIA.

#### **Article 23**

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

**Source of conflict:** The State and the Tribes have disagreed about the applicability of the Land Use Regulatory Commission (LURC) jurisdiction on Tribal trust land. Reservation land is specifically exempted from LURC jurisdiction under State law (12 MRSA §682, §§1). The Passamaquoddy Tribe and Penobscot Nation have proposed regulating development activities on Tribal trust lands under their own laws. The State has repeatedly rejected these proposals.

#### **Article 27**

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

**Source of conflict:** Disputes arising between the Tribes and the State concerning MIA are often heard in Maine courts. The Tribes contend holding a legal proceeding in the courts of one of the parties to the dispute is inherently biased.

#### **Article 29**

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

**Source of conflict:** The Penobscot Nation in particular has been blocked from pursuing treatment as a state (TAS) status for regulatory authority under several Federal environmental statutes in part due to an interpretation that MIA preempts such authority. Tribes do not have the authority to regulate wastewater discharges to the Meduxnekeag, Penobscot, and St. Croix watersheds, ancestral waters for the Maliseet, Penobscot, and Passamaquoddy Peoples.

#### **Article 32**

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and

appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

**Source of conflict:** A large portion of Passamaquoddy and Penobscot land holdings lie within Unorganized Territories in which the Land Use Regulatory Commission (LURC) wields zoning and permitting authority. The Tribes have asserted that the exemption they possess from LURC authority over reservation lands should also apply to trust lands. LURC has disagreed. The State has an uneven record of consulting with the Tribes on projects that could affect their lands or territories. The Tribes are forced to litigate in the courts of the State or Federal Government when they disagree with State actions affecting their territories, a mechanism that has not proven “just and fair” from a Tribal perspective.

#### **Article 34**

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

**Source of conflict:** §6204 specifies Tribes “shall be subject to the laws of the State and to the civil and criminal jurisdiction of the courts of the State to the same extent as any other person or lands or other natural resources therein.”

#### **Article 40**

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

**Source of conflict:** Tribes contend that the resolution of legal disputes in the courts of one of the parties to the legal dispute is inherently unfair. The decisions rendered are based on State and Federal law, with little or no consideration given to “the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.”

### **30 §6205. INDIAN TERRITORY**

**5. Limitations.** No lands held or acquired by or in trust for the Passamaquoddy Tribe or the Penobscot Nation, other than those described in subsections 1, 2, 3 and 4, shall be included within or added to the Passamaquoddy Indian territory or the Penobscot Indian territory except upon recommendation of the commission and approval of the State to be given in the manner required for the enactment of laws by the Legislature and Governor of Maine, provided, however, that no lands within any city, town, village or plantation shall be added to either the Passamaquoddy Indian territory or the Penobscot Indian territory without approval of the legislative body of said city, town, village or plantation in addition to the approval of the State.

**Statutory language or reference in conflict:** Tribes must obtain permission of MITSC and the State in the case of unorganized territory and local government in the case of any land within a

city, town, village or plantation.

Conflicts with UNDRIP Articles:

#### **Article 26**

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

**Source of conflict:** Passamaquoddy and Penobscot acquisition of lands that they wish to add to their respective Indian territories are subject to a positive recommendation from MITSC and the State for land in unorganized territories. Lands within any city, town, village or plantation must also be approved by the relevant local government.

### **30 §6206. POWERS AND DUTIES OF THE INDIAN TRIBES WITHIN THEIR RESPECTIVE INDIAN TERRITORIES**

**1. General Powers.** Except as otherwise provided in this Act, the Passamaquoddy Tribe and the Penobscot Nation, within their respective Indian territories, shall have, exercise and enjoy all the rights, privileges, powers and immunities, including, but without limitation, the power to enact ordinances and collect taxes, and shall be subject to all the duties, obligations, liabilities and limitations of a municipality of and subject to the laws of the State, provided, however, that internal tribal matters, including membership in the respective tribe or nation, the right to reside within the respective Indian territories, tribal organization, tribal government, tribal elections and the use or disposition of settlement fund income shall not be subject to regulation by the State. The Passamaquoddy Tribe and the Penobscot Nation shall designate such officers and officials as are necessary to implement and administer those laws of the State applicable to the respective Indian territories and the residents thereof. Any resident of the Passamaquoddy Indian territory or the Penobscot Indian territory who is not a member of the respective tribe or nation nonetheless shall be equally entitled to receive any municipal or governmental services provided by the respective tribe or nation or by the State, except those services which are provided exclusively to members of the respective tribe or nation pursuant to state or federal law, and shall be entitled to vote in national, state and county elections in the same manner as any tribal member residing within Indian territory.

**Statutory language or reference in conflict:** The requirement that the Passamaquoddy Tribe and Penobscot Nation “shall be subject to all the duties, obligations, liabilities and limitations of a municipality of and subject to the laws of the State.” In addition, the circumscribed limits to the internal tribal matters language.

Conflicts with UNDRIP Articles:

### **Article 3**

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

**Source of conflict:** §6206 circumscribes Passamaquoddy and Penobscot sovereignty. The section requires the Passamaquoddy Tribe and Penobscot Nation to designate individuals to implement and administer State laws applicable to the Tribes. Court decisions and subsequent interpretation of the section have further limited Passamaquoddy and Penobscot sovereignty.

### **Article 4**

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

**Source of conflict:** Though §6206 seemingly protects the internal affairs of the Passamaquoddy Tribe and Penobscot Nation, court decisions have decided that protection is narrower than the understanding the Tribes possessed at the time the signatories approved the agreement. In addition, the protections and responsibilities of §6206 do not apply to the Houlton Band of Maliseet Indians.

### **Article 19**

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

**Source of conflict:** §6206 requires the Passamaquoddy Tribe and Penobscot Nation to implement the laws of the State of Maine applicable to them regardless of their “free, prior and informed consent.” Governor Baldacci did issue EO 06 FY 10-11 on tribal consultation that Governor LePage has indicated will remain in effect. However, it only applies to the Executive Branch of State Government. The Maine Legislature remains able to enact, rescind, or amend Maine laws with the exception of MIA without the “free, prior and informed consent” of the Wabanaki.

## **30 §6206. POWERS AND DUTIES OF THE INDIAN TRIBES WITHIN THEIR RESPECTIVE INDIAN TERRITORIES**

**2. Power to sue and be sued.** The Passamaquoddy Tribe, the Penobscot Nation and their members may sue and be sued in the courts of the State to the same extent as any other entity or person in the State provided, however, that the respective tribe or nation and its officers and employees shall be immune from suit when the respective tribe or nation is acting in its governmental capacity to the same extent as any municipality or like officers or employees thereof within the State.

**Statutory language or reference in conflict:** The language equates the Passamaquoddy Tribe and Penobscot Nation with any other entity or person when in fact they have a unique status under state, federal, and international law.



Conflicts with UNDRIP Articles:

#### **Article 34**

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

**Source of conflict:** §6206, §§2 limits Passamaquoddy and Penobscot judicial autonomy by allowing individuals and other entities to sue them in State Court except when the Tribe or Nation and its representatives act in a governmental capacity.

#### **Article 40**

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

**Source of conflict:** §6206, §§2 says nothing of how State Courts should incorporate the “customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights” of the Passamaquoddy and Penobscot People when they utilize the Maine Judiciary.

### **30 §6206. POWERS AND DUTIES OF THE INDIAN TRIBES WITHIN THEIR RESPECTIVE INDIAN TERRITORIES**

**3. Ordinances.** The Passamaquoddy Tribe and the Penobscot Nation each shall have the right to exercise exclusive jurisdiction within its respective Indian territory over violations by members of either tribe or nation of tribal ordinances adopted pursuant to this section or section 6207. The decision to exercise or terminate the jurisdiction authorized by this section shall be made by each tribal governing body. Should either tribe or nation choose not to exercise, or to terminate its exercise of, jurisdiction as authorized by this section or section 6207, the State shall have exclusive jurisdiction over violations of tribal ordinances by members of either tribe or nation within the Indian territory of that tribe or nation. The State shall have exclusive jurisdiction over violations of tribal ordinances by persons not members of either tribe or nation. **Statutory language or reference in conflict:** The statute limits Passamaquoddy and Penobscot authority to its own citizens.

Conflicts with UNDRIP Articles:

#### **Article 34**

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

**Source of conflict:** §6206, §§3 limits Passamaquoddy and Penobscot jurisdiction to its own citizens.

### **30 §6206-A. POWERS OF THE HOULTON BAND OF MALISEET INDIANS**

The Houlton Band of Maliseet Indians shall not exercise nor enjoy the powers, privileges and immunities of a municipality nor exercise civil or criminal jurisdiction within their lands prior to the enactment of additional legislation specifically authorizing the exercise of those governmental powers.

**Statutory language or reference in conflict:** entire section

Conflicts with UNDRIP Articles:

#### **Article 2**

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

**Source of conflict:** HBMI not equal to the Passamaquoddy Tribe and Penobscot Nation, parties to the same agreement.

#### **Article 3**

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

**Source of conflict:** HBMI not free to determine their political status.

#### **Article 4**

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

**Source of conflict:** HBMI do not enjoy full autonomy or self-government.

#### **Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Source of conflict:** HBMI do not have unfettered freedom to maintain and strengthen their distinct political, legal, economic, social and cultural institutions.

#### **Article 26**

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and

resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

**Source of conflict:** Under §6206-A, the HBMI have limited powers on their lands.

### **Article 32**

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

**Source of conflict:** The HBMI possess less authority to determine development on their land as compared to the Passamaquoddy Tribe, Penobscot Nation, or many other federally recognized tribes. A mixed record exists of state and local municipal government consultation with the HBMI on issues affecting the Meduxnekeag River and its tributaries. Consultation does not equal the standard free and informed consent.

### **Article 34**

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

**Source of conflict:** §6206-A states the Maliseets “shall not ... exercise civil or criminal jurisdiction within their lands” prior to the enactment of legislation granting such powers.

### **Article 40**

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

**Source of conflict:** Wabanaki signatories to the Settlement Act, including the HBMI, have contended the manner of resolving legal disputes between the parties, in the courts of the State or Federal Government, are inherently unfair. State and Federal court decisions give little to no

consideration of “the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.”

### **30 §6207. REGULATION OF FISH AND WILDLIFE RESOURCES**

**1. Adoption of ordinances by tribe.** Subject to the limitations of subsection 6, the Passamaquoddy Tribe and the Penobscot Nation each shall have exclusive authority within their respective Indian territories to promulgate and enact ordinances regulating:

A. Hunting, trapping or other taking of wildlife; and [1979, c. 732, §§1, 31 (NEW).]

B. Taking of fish on any pond in which all the shoreline and all submerged lands are wholly within Indian territory and which is less than 10 acres in surface area. [1979, c. 732, §§1, 31 (NEW).]

Such ordinances shall be equally applicable, on a nondiscriminatory basis, to all persons regardless of whether such person is a member of the respective tribe or nation provided, however, that subject to the limitations of subsection 6, such ordinances may include special provisions for the sustenance of the individual members of the Passamaquoddy Tribe or the Penobscot Nation. In addition to the authority provided by this subsection, the Passamaquoddy Tribe and the Penobscot Nation, subject to the limitations of subsection 6, may exercise within their respective Indian territories all the rights incident to ownership of land under the laws of the State.

**Statutory language or reference in conflict:** Section 6207 does not apply to the Maliseets, an Indigenous party to the same agreement.

Conflicts with UNDRIP Articles:

#### **Article 2**

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

**Source of conflict:** HBMI not equal to the Passamaquoddy Tribe and Penobscot Nation, parties to the same agreement.

#### **Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Source of conflict:** HBMI do not have unfettered freedom to maintain and strengthen their distinct political, legal, economic, social and cultural institutions. The Maliseets are precluded from managing fish and wildlife resources on their lands as section 6207 does not apply to them.

#### **Article 26**

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

**Source of conflict:** The HBMI are precluded from managing fish and wildlife resources on their lands as section 6207 does not apply to the Tribe.

#### **Article 29**

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

**Source of conflict:** The HBMI are precluded from managing fish and wildlife resources on their lands as section 6207 does not apply to the Tribe.

#### **Article 32**

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

**Source of conflict:** The HBMI are precluded from managing fish and wildlife resources on their lands as section 6207 does not apply to the Tribe.

### **30 §6207. REGULATION OF FISH AND WILDLIFE RESOURCES**

2. The Passamaquoddy Tribe and the Penobscot Nation shall establish and maintain registration stations for the purpose of registering bear, moose, deer and other wildlife killed within their respective Indian territories and shall adopt ordinances requiring registration of such wildlife to the extent and in substantially the same manner as such wildlife are required to be registered under the laws of the State. These ordinances requiring registration shall be equally applicable to all persons without distinction based on tribal membership. The Passamaquoddy Tribe and the Penobscot Nation shall report the deer, moose, bear and other wildlife killed and registered within their respective Indian territories to the Commissioner of Inland Fisheries and Wildlife of the State at such times as the commissioner deems appropriate. The records of registration of the Passamaquoddy Tribe and the Penobscot Nation shall be available, at all times, for inspection and examination by the commissioner.

**Statutory language or reference in conflict:** The statutory language requires the Passamaquoddy Tribe and Penobscot Nation to report about the harvesting of wildlife on their land. The records of registration for the two Tribes shall be available at all times to the

Commissioner of Inland Fisheries and Wildlife with no reciprocal provision for the Tribes to access State records.

Conflicts with UNDRIP Articles:

#### **Article 26**

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

**Source of conflict:** §6207, §§2 mandates that the Passamaquoddy Tribe and Penobscot Nation shall establish registration stations, report the results, and maintain State access to their records at all times, constraining the Tribes' "right to own, use, develop and control the lands, territories and resources that they possess."

### **30 §6207. REGULATION OF FISH AND WILDLIFE RESOURCES**

**4. Sustenance fishing within the Indian reservations.** Notwithstanding any rule or regulation promulgated by the commission or any other law of the State, the members of the Passamaquoddy Tribe and the Penobscot Nation may take fish, within the boundaries of their respective Indian reservations, for their individual sustenance subject to the limitations of subsection 6.

**Statutory language or reference in conflict:** Sustenance fishing rights do not apply to the HBMI.

Conflicts with UNDRIP Articles:

#### **Article 2**

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

**Source of conflict:** HBMI not equal to the Passamaquoddy Tribe and Penobscot Nation, parties to the same agreement. They neither possess a reservation within the meaning of MIA nor enjoy sustenance fishing rights on the Meduxnekeag or other waters.

#### **Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Source of conflict:** The Maliseets do not enjoy sustenance fishing rights under §6207, §§4. Sustenance fishing falls within the traditional harvesting activities most associated with

Indigenous people. By excluding the Maliseets from the right to sustenance fishing afforded under §6207, §§4, their ability “to maintain and strengthen their distinct political, legal, economic, social and cultural institutions” is compromised.

#### **Article 26**

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

**Source of conflict:** The HBMI are precluded from using the Meduxnekeag River and other waters for sustenance fishing, an exclusion that infringes upon their right “to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation.”

#### **Article 32**

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

**Source of conflict:** The HBMI are precluded from exercising sustenance fishing rights on the Meduxnekeag River and other waters, infringing on their “right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.”

**6. Supervision by Commissioner of Inland Fisheries and Wildlife.** The Commissioner of Inland Fisheries and Wildlife, or his successor, shall be entitled to conduct fish and wildlife surveys within the Indian territories and on waters subject to the jurisdiction of the commission to the same extent as he is authorized to do so in other areas of the State. Before conducting any such survey the commissioner shall provide reasonable advance notice to the respective tribe or nation and afford it a reasonable opportunity to participate in such survey. If the commissioner, at any time, has reasonable grounds to believe that a tribal ordinance or commission regulation adopted under this section, or the absence of such a tribal ordinance or commission regulation, is adversely affecting or is likely to adversely affect the stock of any fish or wildlife on lands or waters outside the boundaries of land or waters subject to regulation by the commission, the Passamaquoddy Tribe or the Penobscot Nation, he shall inform the governing body of the tribe

or nation or the commission, as is appropriate, of his opinion and attempt to develop appropriate remedial standards in consultation with the tribe or nation or the commission. If such efforts fail, he may call a public hearing to investigate the matter further. Any such hearing shall be conducted in a manner consistent with the laws of the State applicable to adjudicative hearings. If, after hearing, the commissioner determines that any such ordinance, rule or regulation, or the absence of an ordinance, rule or regulation, is causing, or there is a reasonable likelihood that it will cause, a significant depletion of fish or wildlife stocks on lands or waters outside the boundaries of lands or waters subject to regulation by the Passamaquoddy Tribe, the Penobscot Nation or the commission, he may adopt appropriate remedial measures including rescission of any such ordinance, rule or regulation and, in lieu thereof, order the enforcement of the generally applicable laws or regulations of the State. In adopting any remedial measures the commission shall utilize the least restrictive means possible to prevent a substantial diminution of the stocks in question and shall take into consideration the effect that non-Indian practices on non-Indian lands or waters are having on such stocks. In no event shall such remedial measure be more restrictive than those which the commissioner could impose if the area in question was not within Indian territory or waters subject to commission regulation.

In any administrative proceeding under this section the burden of proof shall be on the commissioner. The decision of the commissioner may be appealed in the manner provided by the laws of the State for judicial review of administrative action and shall be sustained only if supported by substantial evidence.

**Statutory language or reference in conflict:** The Commissioner of Inland Fisheries and Wildlife, or his successor, shall be entitled to conduct fish and wildlife surveys within the Indian territories and on waters subject to the jurisdiction of the commission to the same extent as he is authorized to do so in other areas of the State... If, after hearing, the commissioner determines that any such ordinance, rule or regulation, or the absence of an ordinance, rule or regulation, is causing, or there is a reasonable likelihood that it will cause, a significant depletion of fish or wildlife stocks on lands or waters outside the boundaries of lands or waters subject to regulation by the Passamaquoddy Tribe, the Penobscot Nation or the commission, he may adopt appropriate remedial measures including rescission of any such ordinance, rule or regulation and, in lieu thereof, order the enforcement of the generally applicable laws or regulations of the State.

Conflicts with UNDRIP Articles:

### **Article 19**

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

**Source of conflict:** The section allows the IF&W Commissioner to conduct fish and wildlife surveys within the Indian territories subject to MITSC jurisdiction regardless of Passamaquoddy or Penobscot permission. The section also sanctions the IF&W Commissioner to rescind a Tribal ordinance, rule or regulation without their “free, prior and informed consent.”

### **Article 20**

1. Indigenous peoples have the right to maintain and develop their political, economic and social



systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

**Source of conflict:** Article 20 states Indigenous Peoples have a right to be secure in the enjoyment of their own means of subsistence. Despite this right the IF&W Commissioner can supersede it if he/she finds “a significant depletion of fish or wildlife stocks on lands or waters outside the boundaries of lands or waters subject to regulation by the Passamaquoddy Tribe, the Penobscot Nation or the commission.”

#### **Article 26**

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

**Source of conflict:** Provisions in §6207, §§6 violate the right of the Passamaquoddy and Penobscots to “control the lands, territories and resources that they possess.”

#### **Article 27**

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples’ laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

**Source of conflict:** If the Passamaquoddy and/or Penobscots contest a decision of the IF&W Commissioner, the matter “may be appealed in the manner provided by the laws of the State for judicial review of administrative action,” not a body that is “independent, impartial, open and transparent process, giving due recognition to indigenous peoples’ laws, traditions, customs and land tenure systems.”

### **30 §6208. TAXATION**

**2. Property taxes.** The Passamaquoddy Tribe and the Penobscot Nation shall make payments in lieu of taxes on all real and personal property within their respective Indian territory in an amount equal to that which would otherwise be imposed by a county, a district, the State, or other taxing authority on such real and personal property provided, however, that any real or personal property within Indian territory used by either tribe or nation predominantly for governmental purposes shall be exempt from taxation to the same extent that such real or personal property owned by a municipality is exempt under the laws of the State. The Houlton

Band of Maliseet Indians shall make payments in lieu of taxes on Houlton Band Trust Land in an amount equal to that which would otherwise be imposed by a municipality, county, district, the State or other taxing authority on that land or natural resource. Any other real or personal property owned by or held in trust for any Indian, Indian Nation or tribe or band of Indians and not within Indian territory, shall be subject to levy and collection of real and personal property taxes by any and all taxing authorities, including but without limitation municipalities, except that such real and personal property owned by or held for the benefit of and used by the Passamaquoddy Tribe or the Penobscot Nation predominantly for governmental purposes shall be exempt from property taxation to the same extent that such real and personal property owned by a municipality is exempt under the laws of the State.

**Statutory language or reference in conflict:** entire section

Conflicts with UNDRIP Articles:

### **Article 3**

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

**Source of conflict:** The section mandates that the Houlton Band of Maliseet Indians, Passamaquoddy Tribe, and Penobscot Nation shall make payments in lieu of taxes or pay taxes depending on the location and use of the property. The three Tribes are not free to determine whether they wish to make such payments or pay such taxes.

### **Article 4**

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

**Source of conflict:** The statutory requirement that the three Tribes shall make certain payments or pay specified taxes restricts their right to self-determination as well as impacting on their ways and means for financing their autonomous functions.

### **Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Source of conflict:** The mandatory language of the section concerning payments in lieu of taxes or remittance of taxes conflicts with the discretion Indigenous Peoples possess to participate in the political life of the State, including its financing.

### **Article 26**

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

**Source of conflict:** State imposition of payments in lieu of taxes or various taxes infringes on the right of the Tribes to control their lands and ignores key aspects of Wabanaki customs, traditions, and land tenure when considering those lands.

### **30 §6208. TAXATION**

**3. Other taxes.** The Passamaquoddy Tribe, the Penobscot Nation, the members thereof, and any other Indian, Indian Nation, or tribe or band of Indians shall be liable for payment of all other taxes and fees to the same extent as any other person or entity in the State. For purposes of this section either tribe or nation, when acting in its business capacity as distinguished from its governmental capacity, shall be deemed to be a business corporation organized under the laws of the State and shall be taxed as such.

**Statutory language or reference in conflict:** entire section

Conflicts with UNDRIP Articles:

#### **Article 3**

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

**Source of conflict:** Article 3 guarantees Indigenous Peoples the right to self-determination. The statute makes no distinction between Maliseet, Passamaquoddy, and Penobscot citizens and other residents of the State of Maine. The statute specifies an equivalency between Wabanaki citizens and other Maine residents when in fact the Wabanaki possess certain rights and status enjoyed by no other people.

#### **Article 4**

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

**Source of conflict:** The statute infringes upon the Wabanaki right to self-determination.

#### **Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Source of conflict:** Article 5 acknowledges Indigenous Peoples' right to maintain their distinct economic institutions. The statute mandates taxation of the Tribes when they act in a business capacity distinct from their governmental functions. According to Article 5, the Wabanaki should choose when they want to participate in the political and economic life of the State.

#### **Article 26**

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

**Source of conflict:** The statute limits Wabanaki rights to their lands by specifying when they shall pay taxes ignoring Tribal customs, traditions and land tenure.

### **30 §6209-A. JURISDICTION OF THE PASSAMAQUODDY TRIBAL COURT**

**1. Exclusive jurisdiction over certain matters.** Except as provided in subsections 3 and 4, the Passamaquoddy Tribe has the right to exercise exclusive jurisdiction, separate and distinct from the State, over:

A. Criminal offenses for which the maximum potential term of imprisonment is less than one year and the maximum potential fine does not exceed \$5,000 and that are committed on the Indian reservation of the Passamaquoddy Tribe by a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation, except when committed against a person who is not a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation or against the property of a person who is not a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation;

**Statutory language or reference in conflict:** Passamaquoddy criminal jurisdiction is limited by the statute both in terms of the type of offenses and who is subject to the Passamaquoddy Tribal Court.

Conflicts with UNDRIP Articles:

#### **Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Source of conflict:** This section of MIA circumscribes Passamaquoddy judicial authority infringing upon the Tribe's right to its distinct legal institution.

### **Article 34**

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

**Source of conflict:** MIA limits the ability of the Passamaquoddy Tribe to develop its judicial system without the approval and consent of the State of Maine.

B. Juvenile crimes against a person or property involving conduct that, if committed by an adult, would fall within the exclusive jurisdiction of the Passamaquoddy Tribe under paragraph A, and juvenile crimes, as defined in Title 15, section 3103, subsection 1, paragraphs B and C, committed by a juvenile member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation on the reservation of the Passamaquoddy Tribe;

**Statutory language or reference in conflict:** Passamaquoddy juvenile crime jurisdiction is limited by the statute both in terms of the type of offenses and who is subject to the Passamaquoddy Tribal Court.

Conflicts with UNDRIP Articles:

### **Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Source of conflict:** This section of MIA circumscribes Passamaquoddy judicial authority infringing upon the Tribe's right to its distinct legal institution.

### **Article 34**

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

**Source of conflict:** MIA limits the ability of the Passamaquoddy Tribe to develop its judicial system without the approval and consent of the State of Maine.

C. Civil actions between members of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation arising on the Indian reservation of the Passamaquoddy Tribe and cognizable as small claims under the laws of the State, and civil actions against a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation under Title 22, section 2383 involving conduct on the Indian reservation of the Passamaquoddy Tribe by a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation;

**Statutory language or reference in conflict:** Passamaquoddy civil jurisdiction is limited by the statute both in terms of the type of offenses and who is subject to the Passamaquoddy Tribal Court.

Conflicts with UNDRIP Articles:

**Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Source of conflict:** This section of MIA circumscribes Passamaquoddy judicial authority infringing upon the Tribe's right to its distinct legal institution.

**Article 34**

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

**Source of conflict:** MIA limits the ability of the Passamaquoddy Tribe to develop its judicial system without the approval and consent of the State of Maine.

E. Other domestic relations matters, including marriage, divorce and support, between members of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation, both of whom reside within the Indian reservation of the Passamaquoddy Tribe.

**Statutory language or reference in conflict:** Passamaquoddy jurisdiction over matters related to domestic relations is limited by the statute in terms of who is subject to the Passamaquoddy Tribal Court.

Conflicts with UNDRIP Articles:

**Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Source of conflict:** This section of MIA circumscribes Passamaquoddy judicial authority infringing upon the Tribe's right to its distinct legal institution.

**Article 34**

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

**Source of conflict:** MIA limits the ability of the Passamaquoddy Tribe to develop its judicial system without the approval and consent of the State of Maine.

The governing body of the Passamaquoddy Tribe shall decide whether to exercise or terminate the exercise of the exclusive jurisdiction authorized by this subsection. If the Passamaquoddy Tribe chooses not to exercise, or chooses to terminate its exercise of, jurisdiction over the criminal, juvenile, civil and domestic matters described in this subsection, the State has exclusive jurisdiction over those matters. Except as provided in paragraphs A and B, all laws of the State relating to criminal offenses and juvenile crimes apply within the Passamaquoddy Indian reservation and the State has exclusive jurisdiction over those offenses and crimes.

**Statutory language or reference in conflict:** Passamaquoddy jurisdiction over matters related to criminal and juvenile crimes is limited by the statute both in terms of the type of offenses and who is subject to the Passamaquoddy Tribal Court.

Conflicts with UNDRIP Articles:

#### **Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Source of conflict:** This section of MIA circumscribes Passamaquoddy judicial authority infringing upon the Tribe's right to its distinct legal institution.

#### **Article 34**

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

**Source of conflict:** MIA limits the ability of the Passamaquoddy Tribe to develop its judicial system without the approval and consent of the State of Maine.

**2. Definitions of crimes; tribal procedures.** In exercising its exclusive jurisdiction under subsection 1, paragraphs A and B, the Passamaquoddy Tribe is deemed to be enforcing Passamaquoddy tribal law. The definitions of the criminal offenses and juvenile crimes and the punishments applicable to those criminal offenses and juvenile crimes over which the Passamaquoddy Tribe has exclusive jurisdiction under this section are governed by the laws of the State. Issuance and execution of criminal process are also governed by the laws of the State. The procedures for the establishment and operation of tribal forums created to effectuate the purposes of this section are governed by federal statute, including, without limitation, the provisions of 25 United States Code, Sections 1301 to 1303 and rules or regulations generally applicable to the exercise of criminal jurisdiction by Indian tribes on federal Indian reservations.

**Statutory language or reference in conflict:** Passamaquoddy jurisdiction over criminal and juvenile matters is limited by the statute and other applicable State provisions in terms of the definitions of criminal and juvenile crimes and the issuance and execution of criminal process. Federal restrictions also apply.

Conflicts with UNDRIP Articles:

#### **Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Source of conflict:** This section of MIA circumscribes Passamaquoddy judicial authority infringing upon the Tribe's right to its distinct legal institution.

#### **Article 34**

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

**Source of conflict:** MIA limits the ability of the Passamaquoddy Tribe to develop its judicial system due to State and Federal restrictions.

**5. Future Indian communities.** Any 25 or more adult members of the Passamaquoddy Tribe residing within their Indian territory and in reasonable proximity to each other may petition the commission for designation as an extended reservation. If the commission determines, after investigation, that the petitioning Passamaquoddy tribal members constitute an extended reservation, the commission shall establish the boundaries of the extended reservation and recommend to the Legislature that, subject to the approval of the governing body of the Passamaquoddy Tribe, it amend this Act to extend the jurisdiction of the Passamaquoddy Tribe to the extended reservation. The boundaries of an extended reservation may not exceed those reasonably necessary to encompass the petitioning Passamaquoddy tribal members.

**Statutory language or reference in conflict:** This section infringes upon Passamaquoddy self-determination by requiring the Tribe to seek the approval of MITSC and the Maine Legislature to extend the boundaries of its reservation within lands already owned by the Passamaquoddy Tribe.

Conflicts with UNDRIP Articles:

#### **Article 3**

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.



**Source of conflict:** This section of MIA limits the Passamaquoddy Tribe's ability to determine which areas among its land holdings are most appropriate for housing and extending the boundaries of its reservation.

#### **Article 4**

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

**Source of conflict:** The statute infringes upon the Passamaquoddy right to self-determination by requiring the Tribe to obtain the approval of MITSC and the State to expand its reservation boundaries.

#### **Article 9**

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

**Source of conflict:** The statute gives authority to MITSC and the State over a question that should be a Passamaquoddy internal tribal matter.

#### **Article 23**

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

**Source of conflict:** According to the law, MITSC and the State have authority over a question that under UNDRIP should be determined by the Passamaquoddy People.

#### **Article 26**

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

**Source of conflict:** The statute conflicts with this UNDRIP article, especially section 2 that states "Indigenous peoples have the right to own, use, develop and control" their lands. Under the MIA provision, the Passamaquoddy Tribe needs MITSC's and the State's consent to expand their reservation within existing land holdings.

### **30 §6209-B. JURISDICTION OF THE PENOBSCOT NATION TRIBAL COURT**

**1. Exclusive jurisdiction over certain matters.** Except as provided in subsections 3 and 4, the Penobscot Nation has the right to exercise exclusive jurisdiction, separate and distinct from the State, over:

A. Criminal offenses for which the maximum potential term of imprisonment does not exceed one year and the maximum potential fine does not exceed \$5,000 and that are committed on the Indian reservation of the Penobscot Nation by a member of any federally recognized Indian tribe, nation, band or other group, except when committed against a person who is not a member of any federally recognized Indian tribe, nation, band or other group or against the property of a person who is not a member of any federally recognized Indian tribe, nation, band or other group;

**Statutory language or reference in conflict:** Penobscot criminal jurisdiction is limited by the statute both in terms of the type of offenses and who is subject to the Penobscot Tribal Court.

Conflicts with UNDRIP Articles:

#### **Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Source of conflict:** This section of MIA circumscribes Penobscot judicial authority infringing upon the Tribe's right to its distinct legal institution.

#### **Article 34**

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

**Source of conflict:** MIA limits the ability of the Penobscot Nation to develop its judicial system without the approval and consent of the State of Maine.

B. Juvenile crimes against a person or property involving conduct that, if committed by an adult, would fall within the exclusive jurisdiction of the Penobscot Nation under paragraph A, and juvenile crimes, as defined in Title 15, section 3103, subsection 1, paragraphs B and C, committed by a juvenile member of either the Passamaquoddy Tribe or the Penobscot Nation on the Indian reservation of the Penobscot Nation;

**Statutory language or reference in conflict:** Penobscot juvenile crime jurisdiction is limited by the statute both in terms of the type of offenses and who is subject to the Penobscot Tribal Court.

Conflicts with UNDRIP Articles:

## **Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Source of conflict:** This section of MIA circumscribes Penobscot judicial authority infringing upon the Tribe's right to its distinct legal institution.

## **Article 34**

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

**Source of conflict:** MIA limits the ability of the Penobscot Nation to develop its judicial system without the approval and consent of the State of Maine.

C. Civil actions between members of either the Passamaquoddy Tribe or the Penobscot Nation arising on the Indian reservation of the Penobscot Nation and cognizable as small claims under the laws of the State, and civil actions against a member of either the Passamaquoddy Tribe or the Penobscot Nation under Title 22, section 2383 involving conduct on the Indian reservation of the Penobscot Nation by a member of either the Passamaquoddy Tribe or the Penobscot Nation;

**Statutory language or reference in conflict:** Penobscot civil jurisdiction is limited by the statute both in terms of the type of offenses and who is subject to the Penobscot Tribal Court.

Conflicts with UNDRIP Articles:

## **Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Source of conflict:** This section of MIA circumscribes Penobscot judicial authority infringing upon the Tribe's right to its distinct legal institution.

## **Article 34**

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

**Source of conflict:** MIA limits the ability of the Penobscot Nation to develop its judicial system without the approval and consent of the State of Maine.

E. Other domestic relations matters, including marriage, divorce and support, between members of either the Passamaquoddy Tribe or the Penobscot Nation, both of whom reside on the Indian reservation of the Penobscot Nation.

**Statutory language or reference in conflict:** Penobscot jurisdiction over matters related to domestic relations is limited by the statute in terms of who is subject to the Penobscot Tribal Court.

Conflicts with UNDRIP Articles:

#### **Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Source of conflict:** This section of MIA circumscribes Penobscot judicial authority infringing upon the Tribe's right to its distinct legal institution.

#### **Article 34**

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

**Source of conflict:** MIA limits the ability of the Penobscot Nation to develop its judicial system without the approval and consent of the State of Maine.

The governing body of the Penobscot Nation shall decide whether to exercise or terminate the exercise of the exclusive jurisdiction authorized by this subsection. If the Penobscot Nation chooses not to exercise, or chooses to terminate its exercise of, jurisdiction over the criminal, juvenile, civil and domestic matters described in this subsection, the State has exclusive jurisdiction over those matters. Except as provided in paragraphs A and B, all laws of the State relating to criminal offenses and juvenile crimes apply within the Penobscot Indian reservation and the State has exclusive jurisdiction over those offenses and crimes.

**Statutory language or reference in conflict:** Penobscot jurisdiction over matters related to criminal and juvenile crimes is limited by the statute both in terms of the type of offenses and who is subject to the Penobscot Tribal Court.

Conflicts with UNDRIP Articles:

#### **Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Source of conflict:** This section of MIA circumscribes Penobscot judicial authority infringing upon the Tribe's right to its distinct legal institution.

#### **Article 34**

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

**Source of conflict:** MIA limits the ability of the Penobscot Nation to develop its judicial system without the approval and consent of the State of Maine.

**2. Definitions of crimes; tribal procedures.** In exercising its exclusive jurisdiction under subsection 1, paragraphs A and B, the Penobscot Nation is deemed to be enforcing Penobscot tribal law. The definitions of the criminal offenses and juvenile crimes and the punishments applicable to those criminal offenses and juvenile crimes over which the Penobscot Nation has exclusive jurisdiction under this section are governed by the laws of the State. Issuance and execution of criminal process are also governed by the laws of the State. The procedures for the establishment and operation of tribal forums created to effectuate the purposes of this section are governed by federal statute, including, without limitation, the provisions of 25 United States Code, Sections 1301 to 1303 and rules or regulations generally applicable to the exercise of criminal jurisdiction by Indian tribes on federal Indian reservations.

**Statutory language or reference in conflict:** Penobscot jurisdiction over criminal and juvenile matters is limited by the statute and other applicable State provisions in terms of the definitions of criminal and juvenile crimes and the issuance and execution of criminal process. Federal restrictions also apply.

Conflicts with UNDRIP Articles:

#### **Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Source of conflict:** This section of MIA circumscribes Penobscot judicial authority infringing upon the Tribe's right to its distinct legal institution.

#### **Article 34**

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

**Source of conflict:** MIA limits the ability of the Penobscot Nation to develop its judicial system due to State and Federal restrictions.

**5. Future Indian communities.** Any 25 or more adult members of the Penobscot Nation residing within their Indian territory and in reasonable proximity to each other may petition the commission for designation as an extended reservation. If the commission determines, after investigation, that the petitioning tribal members constitute an extended reservation, the commission shall establish the boundaries of the extended reservation and recommend to the Legislature that, subject to the approval of the governing body of the Penobscot Nation, it amend this Act to extend the jurisdiction of the Penobscot Nation to the extended reservation. The boundaries of an extended reservation may not exceed those reasonably necessary to encompass the petitioning tribal members.

**Statutory language or reference in conflict:** This section infringes upon Penobscot self-determination by requiring the Tribe to seek the approval of MITSC and the Maine Legislature to extend the boundaries of its reservation within lands already owned by the Penobscot Nation.

Conflicts with UNDRIP Articles:

### **Article 3**

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

**Source of conflict:** This section of MIA limits the Penobscot Nation's ability to determine which areas among its land holdings are most appropriate for housing and extending the boundaries of its reservation.

### **Article 4**

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

**Source of conflict:** The statute infringes upon the Penobscot right to self-determination by requiring the Tribe to obtain the approval of MITSC and the State to expand its reservation boundaries.

### **Article 9**

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

**Source of conflict:** The statute gives authority to MITSC and the State over a question that should be a Penobscot internal tribal matter.

### **Article 23**

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social

programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

**Source of conflict:** According to the law, MITSC and the State have authority over a question that under UNDRIP should be determined by the Penobscot People.

#### **Article 26**

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

**Source of conflict:** The statute conflicts with this UNDRIP article, especially section 2 that states “Indigenous peoples have the right to own, use, develop and control” their lands. Under the MIA provision, the Penobscot Nation needs MITSC’s and the State’s consent to expand their reservation within existing land holdings.

#### **30 §6209-C. JURISDICTION OF THE HOULTON BAND OF MALISEET INDIANS TRIBAL COURT**

*(CONFLICT)*

**1. Exclusive jurisdiction over certain matters.** Except as provided in subsections 3 and 4, the Houlton Band of Maliseet Indians has the right to exercise exclusive jurisdiction, separate and distinct from the State, over:

A. Criminal offenses for which the maximum potential term of imprisonment does not exceed one year and the maximum potential fine does not exceed \$5,000 and that are committed on the Houlton Band Jurisdiction Land by a member of the Houlton Band of Maliseet Indians, except when committed against a person who is not a member of the Houlton Band of Maliseet Indians or against the property of a person who is not a member of the Houlton Band of Maliseet Indians;

**Statutory language or reference in conflict:** Maliseet criminal jurisdiction is limited by the statute both in terms of the type of offenses and who is subject to the Maliseet Tribal Court.

Conflicts with UNDRIP Articles:

#### **Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Source of conflict:** This section of MIA circumscribes Maliseet judicial authority infringing upon the Tribe's right to its distinct legal institution.

#### **Article 34**

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

**Source of conflict:** MIA limits the ability of the Maliseet Tribe to develop its judicial system without the approval and consent of the State of Maine.

B. Juvenile crimes against a person or property involving conduct that, if committed by an adult, would fall within the exclusive jurisdiction of the Houlton Band of Maliseet Indians under paragraph A and juvenile crimes, as defined in Title 15, section 3103, subsection 1, paragraphs B and C, committed by a juvenile member of the Houlton Band of Maliseet Indians on the Houlton Band Jurisdiction Land;

**Statutory language or reference in conflict:** Maliseet juvenile crime jurisdiction is limited by the statute both in terms of the type of offenses and who is subject to the Maliseet Tribal Court.

Conflicts with UNDRIP Articles:

#### **Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Source of conflict:** This section of MIA circumscribes Maliseet judicial authority infringing upon the Tribe's right to its distinct legal institution.

#### **Article 34**

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

**Source of conflict:** MIA limits the ability of the Maliseet Tribe to develop its judicial system without the approval and consent of the State of Maine.

C. Civil actions between members of the Houlton Band of Maliseet Indians arising on the Houlton Band Jurisdiction Land and cognizable as small claims under the laws of the State and civil actions against a member of the Houlton Band of Maliseet Indians under Title 22, section 2383 involving conduct on the Houlton Band Jurisdiction Land by a member of the Houlton Band of Maliseet Indians;



**Statutory language or reference in conflict:** Maliseet civil jurisdiction is limited by the statute both in terms of the type of offenses and who is subject to the Maliseet Tribal Court.

Conflicts with UNDRIP Articles:

**Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Source of conflict:** This section of MIA circumscribes Maliseet judicial authority infringing upon the Tribe's right to its distinct legal institution.

**Article 34**

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

**Source of conflict:** MIA limits the ability of the Maliseet Tribe to develop its judicial system without the approval and consent of the State of Maine.

E. Other domestic relations matters, including marriage, divorce and support, between members of the Houlton Band of Maliseet Indians, both of whom reside within the Houlton Band Jurisdiction Land.

**Statutory language or reference in conflict:** Maliseet jurisdiction over matters related to domestic relations is limited by the statute in terms of who is subject to the Maliseet Tribal Court.

Conflicts with UNDRIP Articles:

**Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Source of conflict:** This section of MIA circumscribes Maliseet judicial authority infringing upon the Tribe's right to its distinct legal institution.

**Article 34**

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

**Source of conflict:** MIA limits the ability of the Maliseet Tribe to develop its judicial system without the approval and consent of the State of Maine.

The governing body of the Houlton Band of Maliseet Indians shall decide whether to exercise or terminate the exercise of the exclusive jurisdiction authorized by this subsection. The decision to exercise, to terminate the exercise of or to reassert the exercise of jurisdiction under each of the subject areas described by paragraphs A to E may be made separately. Until the Houlton Band of Maliseet Indians notifies the Attorney General that the band has decided to exercise exclusive jurisdiction set forth in any or all of the paragraphs in this subsection, the State has exclusive jurisdiction over those matters. If the Houlton Band of Maliseet Indians chooses not to exercise or chooses to terminate its exercise of exclusive jurisdiction set forth in any or all of the paragraphs in this subsection, the State has exclusive jurisdiction over those matters until the Houlton Band of Maliseet Indians chooses to exercise its exclusive jurisdiction. When the Houlton Band of Maliseet Indians chooses to reassert the exercise of exclusive jurisdiction over any or all of the areas of the exclusive jurisdiction authorized by this subsection it must first provide 30 days' notice to the Attorney General. Except as provided in subsections 2 and 3, all laws of the State relating to criminal offenses and juvenile crimes apply within the Houlton Band Trust Land and the State has exclusive jurisdiction over those offenses and crimes.

**Statutory language or reference in conflict:** Maliseet jurisdiction over matters related to criminal and juvenile crimes is limited by the statute both in terms of the type of offenses and who is subject to the Maliseet Tribal Court.

Conflicts with UNDRIP Articles:

#### **Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Source of conflict:** This section of MIA circumscribes Maliseet judicial authority infringing upon the Tribe's right to its distinct legal institution.

#### **Article 34**

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

**Source of conflict:** MIA limits the ability of the Maliseet Tribe to develop its judicial system without the approval and consent of the State of Maine.

**2. Definitions of crimes; tribal procedures.** In exercising its exclusive jurisdiction under subsection 1, paragraphs A and B, the Houlton Band of Maliseet Indians is deemed to be enforcing tribal law of the Houlton Band of Maliseet Indians. The definitions of the criminal offenses and juvenile crimes and the punishments applicable to those criminal offenses and

juvenile crimes over which the Houlton Band of Maliseet Indians has exclusive jurisdiction under this section are governed by the laws of the State. Issuance and execution of criminal process are also governed by the laws of the State. The procedures for the establishment and operation of tribal forums created to effectuate the purposes of this section are governed by federal statute, including, without limitation, the provisions of 25 United States Code, Sections 1301 to 1303 and rules and regulations generally applicable to the exercise of criminal jurisdiction by Indian tribes on federal Indian reservations.

**Statutory language or reference in conflict:** Maliseet jurisdiction over criminal and juvenile matters is limited by the statute and other applicable State provisions in terms of the definitions of criminal and juvenile crimes and the issuance and execution of criminal process. Federal restrictions also apply.

Conflicts with UNDRIP Articles:

#### **Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Source of conflict:** This section of MIA circumscribes Maliseet judicial authority infringing upon the Tribe's right to its distinct legal institution.

#### **Article 34**

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

**Source of conflict:** MIA limits the ability of the Maliseet Tribe to develop its judicial system due to State and Federal restrictions.

### **30 §6210. LAW ENFORCEMENT ON INDIAN RESERVATIONS AND WITHIN INDIAN TERRITORY**

**2. Joint authority of tribal and state law enforcement officers.** Law enforcement officers appointed by the Passamaquoddy Tribe or the Penobscot Nation have the authority within their respective Indian territories and state and county law enforcement officers have the authority within both Indian territories to enforce rules or regulations adopted by the commission under section 6207, subsection 3 and to enforce all laws of the State other than those over which the Passamaquoddy Tribe or the Penobscot Nation has exclusive jurisdiction under section 6209-A, subsection 1 and section 6209-B, subsection 1, respectively.

**Statutory language or reference in conflict:** The enforcement of all laws of the State other than those over which the Passamaquoddy Tribe or the Penobscot Nation have exclusive jurisdiction.

Conflicts with UNDRIP Articles:

### **Article 3**

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

**Source of conflict:** Article 3 guarantees Indigenous Peoples the right to self-determination. The statute makes all State laws applicable and enforceable on Passamaquoddy and Penobscot lands with certain exceptions, limiting the Tribes' ability to freely determine their political status.

### **Article 4**

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

**Source of conflict:** The statute infringes upon the Wabanaki right to self-determination.

### **Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Source of conflict:** Article 5 acknowledges Indigenous Peoples' right to maintain their distinct political and legal institutions. All State laws with some limited exceptions apply on Passamaquoddy and Penobscot lands, compromising their rights under Article 5.

### **Article 19**

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

**Source of conflict:** As the body of State law expands with every new law enacted by the Maine Legislature, Article 19 is violated in every instance when the Wabanaki have not been consulted and given their free, prior and informed consent that the new law applies to them.

### **Article 26**

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

**Source of conflict:** The statute limits Wabanaki rights to their lands by specifying which Tribal and State laws apply and who can enforce them, ignoring Passamaquoddy and Penobscot customs, traditions and land tenure.

#### **Article 34**

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

**Source of conflict:** The Passamaquoddy and Penobscot right to promote, develop and maintain their judicial systems is constrained by the statute in question.

### **30 §6214. TRIBAL SCHOOL COMMITTEES**

The Passamaquoddy Tribe and the Penobscot Nation are authorized to create respective tribal school committees, in substitution for the committees heretofore provided for under the laws of the State. Such tribal school committees shall operate under the laws of the State applicable to school administrative units. The presently constituted tribal school committee of the respective tribe or nation shall continue in existence and shall exercise all the authority heretofore vested by law in it until such time as the respective tribe or nation creates the tribal school committee authorized by this section.

**Statutory language or reference in conflict:** The State assumes the authority to grant what the Passamaquoddy Tribe and Penobscot Nation possess as inherent rights articulated throughout the UNDRIP. Additionally, the statute specifies tribal school committees shall operate under the laws of the State.

Conflicts with UNDRIP Articles:

#### **Article 3**

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

**Source of conflict:** Article 3 guarantees Indigenous Peoples the right to self-determination. The statute permits the Passamaquoddy and Penobscot Governments to form tribal school committees when under Article 3 they have the ability to freely determine their political status.

#### **Article 4**

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

**Source of conflict:** The statute infringes upon the Wabanaki right to self-determination by granting the authority to the Passamaquoddy and Penobscot Governments to form tribal school committees which under Article 4 whether they desire them and what form and powers they

might possess should be considered a matter of self-government relating to their internal and local affairs.

#### **Article 5**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Source of conflict:** The Passamaquoddy and Penobscots have the right to form tribal school committees with the structure, duties, and responsibilities that suit the respective Tribal Governments while possessing the ability to access any sources of State funding available to municipalities or other administrative school units.

#### **Article 14**

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

**Source of conflict:** The statute conflicts with the Passamaquoddy and Penobscot right “to establish and control their educational systems and institutions.”

#### **Article 19**

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

**Source of conflict:** As State law changes as it applies to school committees, Article 19 is violated in every instance when the Wabanaki have not been consulted and given their free, prior and informed consent that the new law applies to them.

#### **Article 23**

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

**Source of conflict:** Education is vital to the economic and social programs of the Passamaquoddy Tribe and Penobscot Nation. The statute constrains their ability to develop and determine their own institutions, in this instance tribal school committees.

## **Article 26**

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

**Source of conflict:** The statute limits Wabanaki rights to their lands by specifying which Tribal and State laws apply and who can enforce them, ignoring Passamaquoddy and Penobscot customs, traditions and land tenure.

## **Article 34**

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

**Source of conflict:** The Passamaquoddy and Penobscot right to promote, develop and maintain their judicial systems is constrained by the statute in question.