



## **UN Permanent Forum on Indigenous Issues 18th Session (22 April to 3 May 2019)**

### Agenda Item 9:

Discussion on the theme “Traditional Knowledge: generation, transmission and protection”

This statement is made by the National Congress of American Indians, the oldest, largest and most representative American Indian and Alaska Native organization in the United States, and the Native American Rights Fund, which is the oldest and largest non-profit law firm in the United States defending the rights of Native American tribes. It is crucial to have this discussion on traditional knowledge because of the important contributions traditional knowledge makes to the world, because of the vulnerability of traditional knowledge to misappropriation, and because of the undermining of the traditional context in which such knowledge is generated and transmitted. Our comments are primarily directed to the World Intellectual Property Organization’s Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (WIPO IGC) and the United Nations Framework Convention on Climate Change (UNFCCC), where we actively participate.

First, we address the WIPO IGC which, since 2010, has engaged in formal text-based negotiations on legal instruments for the protection of Indigenous Peoples’ traditional knowledge, traditional cultural expressions and genetic resources.

The Forum has made a number of past recommendations related to the IGC negotiations and we are pleased to acknowledge some positive developments. For example, the WIPO Secretariat has prepared and made available on the WIPO website useful publications related to Indigenous Peoples’ intellectual property and offers trainings, which contribute to capacity-building of Indigenous Peoples.

However, funding for Indigenous Peoples’ participation in the IGC negotiations is woefully inadequate. For the session in March 2019, there was not sufficient funding in the WIPO Voluntary Fund to support the participation of even a single Indigenous representative. While the Government of Canada recently announced a contribution to the Fund, which is very much appreciated, this is only a temporary reprieve. To address this problem permanently, we urge that the Forum reiterate its recommendation (17<sup>th</sup> Session Report, para. 58) that funding for Indigenous Peoples’ participation in the IGC negotiations be provided through WIPO’s regular budget.

We also acknowledge and appreciate the IGC’s past inclusion of Indigenous Peoples’ representatives in *ad hoc* expert groups and working methodologies such as small contact

groups and informals. We recommend that the Forum call upon the IGC to continue to include Indigenous representatives in all expert groups, working groups and other negotiation modalities, consistent with Article 18 of the UN Declaration on the Rights of Indigenous Peoples (UN Declaration), and to appoint Indigenous representatives as Friends of the Chair, Facilitators and/or Co-chairs of the Committee.

Finally, we recommend two technical studies to amplify the human rights framework in the IGC negotiations, and we request that the Forum recommend to WIPO that the completed studies be submitted to future sessions of the IGC.

First, we request that the 2014 technical review of the IGC draft texts performed by former Special Rapporteur James Anaya be updated to focus on recent developments in the negotiations. As one example, we cite the introduction of the concept of “balance” – which inappropriately seems to suggest that Indigenous Peoples’ rights of self-determination, free, prior and informed consent and other rights contained in the UN Declaration are to be balanced with the interests of industry and other stakeholders. Another example is a proposed temporal limitation, which would limit protection to traditional knowledge that has been in existence 50 years or 5 generations, contrary to the various means of generation of traditional knowledge, including through dreams.

Second, we request a recommendation to EMRIP for a study on Indigenous Peoples’ Intellectual Property, as requested in a letter to EMRIP by the WIPO IGC Indigenous Caucus at WIPO IGC 37 in August 2018.

Turning to the UNFCCC, we commend the creation of a Facilitative Work Group (FWG) to create a work plan for the Local Communities and Indigenous Peoples platform. The FWG is composed of seven state representatives and seven Indigenous representatives chosen by themselves from each region of the world, with representatives from both groups serving as co-chairs. We urge the Forum to encourage the UNFCCC to ensure that the obligation to strengthen traditional knowledge is given proper weight along with the incorporation of traditional knowledge into policy addressing climate change, ensuring at all points the observance of the principle of free, prior and informed consent and the other rights contained in the UN Declaration.

In conclusion, we highlight the connection between land rights, genetic resources and traditional knowledge, in the context of the sacred Peyote plant medicine. The Indigenous use of Peyote traces back 10,000 years to central Mexico, and spread to the United States in the 1800s. Peyote is now used widely as a pan-Native religion, and has revitalized Indigenous identity, the spread of traditional knowledge, and spiritual connection. Modern land practices, access difficulties, threats of mining, and improper harvesting threaten the long-term viability of Peyote in its natural habitat. The Indigenous Peyote Conservation Initiative (IPCI), an indigenous led, land-based initiative, supports the spiritual, ecological, cultural, economic, and sustainability issues related to the sacred Peyote and engages issues such as land access, pilgrimage, conservation, stewardship, youth education, land purchase and leasing, and development of rancher relationships. We would appreciate the Forum recommending that Mexico and the United States partner with IPCI in fostering these goals.

**The full text of our recommendations is available at [narf.org](http://narf.org).**