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May 12, 2004

Third Session, UN Permanent Forum on Indigenous Issues
New York, 10-21 May 2004

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**Collective Statement of Indigenous Peoples^t on the Protection of Indigenous Knowledge
Agenda Item 4(e): Culture**

Agreeing Organizations:

Indigenous Peoples' Council on Biocolonialism (IPCB)
Na Koa Ikaika O Ka Lahui Hawai'i
Asian Indigenous Peoples' Pact (AIPP) Foundation
Association of Indigenous Village Leaders in Suriname (VIDS)
International Indian Treaty Council (IITC)
Indigenous Youth Caucus
Rapa Nui Parliament
The Traditional Circle of Indian Elders and Youth
Call of the Earth (COE)
Concerned Women for Peace for Sudan
African Indigenous Women's Organization
Indigenous Information Network
Kamakakuokalani Center for Hawaiian Studies
Ka Lahui Hawaii

The following are our recommendations for the Permanent Forum in relation to the protection of Indigenous knowledge in the CBD, and other UN agencies such as WIPO and UNESCO.

I. RECOMMENDATIONS

A. Permanent Forum

1. The PF to advise WIPO and the CBD that those forums are not the appropriate for the development of an international regime for the protection of genetic resources, traditional knowledge and folklore. The appropriate place for these discussions would be under the auspices of the Sub-Commission on Human Rights, such as the Working Group on Indigenous Populations.
2. The PF serve as the appropriate coordinating body to collect the processes and outputs of the various UN agencies that are discussing mechanisms for the protection of Indigenous knowledge, including WIPO, CBD, and UNESCO among others;
3. The PF analyze these aforementioned UN agencies processes and outputs relating to the protection of Indigenous knowledge to ensure consistency with existing human rights standards for the protection of Indigenous peoples' rights.
4. The PF participate in the Ad-Hoc Working Group on Access & Benefit Sharing, the Ad-Hoc Working Group on Article 8(j) and Related Provisions, especially in relation to its work on sui generis protection of traditional knowledge, the WIPO Inter-

Governmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC).

5. The PF designate "Indigenous Knowledge" as the 2005 theme of the PF to bring attention to the need for protection of Indigenous peoples' rights to free prior and informed consent regarding the use of their Indigenous knowledge, innovations, and practices, both traditional and contemporary, and including cultural expressions, artforms, and related to the utilization of genetic resources.
6. We urge the PF on Indigenous Issues to work to promote the adoption of the Draft Declaration on the Rights of Indigenous Peoples;

B. Convention on Biological Diversity

7. The Convention on Biological Diversity's Ad-Hoc Open Ended Working Group on Article 8(j) must be urged to advance their mandate to develop mechanisms for the effective sui generis systems of protection based on customary laws of Indigenous peoples. Particularly in light of the Conference of the Parties of the CBD decision to increase the pace in the elaboration and implementation of a proposed international regime on access and benefit sharing;
8. We request the CBD to facilitate the full and effective participation, including funding, of Indigenous peoples' and the PF in the work of the Ad-Hoc Working Group on Access & Benefit Sharing and the Ad-Hoc Working Group on Article 8(j) and Related Provisions.

C. UN Agencies

9. We request that UN Agencies, such as WIPO and UNESCO, be urged to advance the exploration of non-intellectual property approaches and tools for the protection of indigenous knowledge in consultation with Indigenous peoples, including recognition of Indigenous peoples' customary laws and traditional methods of protection.
10. We request WIPO to facilitate the full and effective participation, including funding, of Indigenous peoples and the PF in the work of the WIPO Inter-Governmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC).

II. Discussion

Indigenous knowledge is the foundation of Indigenous cultures. This knowledge permeates every aspect of our lives and is expressed in both tangible and intangible forms. Indigenous knowledge reflects the wisdom of our Ancestors, and we have a responsibility to protect and perpetuate for the benefit of our future generations.

Indigenous peoples are greatly concerned over the application of intellectual property rights over genetic resources and traditional knowledge. We continue to maintain and protect biologically diverse ecosystems for the collective good. We hold knowledge about our environments that is potentially valuable to bioprospectors or others seeking to profit from our knowledge and exploit

our resources. For instance, a Hagahai man from Papua New Guinea had his DNA patented by a federal agency of the United States government in 1994. The Amazonian Indigenous peoples were unsuccessful in their struggle to overturn a patent granted to a US researcher for their sacred medicinal plant, the Ayahuasca.

We know the current proliferation of debate regarding the protection of traditional knowledge and genetic resources that is taking place in various UN fora is centered on mechanisms for exploitation, not protection. These discussions focus on the use of Western Intellectual Property Rights to be used as the mechanisms for the protection of Indigenous knowledge. These mechanisms are not only inadequate, but dangerous.

Indigenous peoples who have participated in the CBD, WIPO, and other UN processes, have consistently asserted our proprietary, inherent, and inalienable rights over our traditional knowledge and biological resources. Those who wish to impose intellectual property rights over our traditional knowledge and resources, if successful, will transform our knowledge and resources into individually owned, alienable commodities, subject to IPR protection for a short period of time. For instance, patents typically are granted for 20 years. Western property law, and in particular, intellectual property rights, are contradictory to the customary laws of Indigenous peoples to safeguard and protect our traditional knowledge.

Current proposals that offer Indigenous peoples benefit sharing arrangements simply coerce Indigenous peoples into participation in the economic exploitation of their knowledge and resources without realizing the legal implications in doing so. No nation should be forced to market their cultural patrimony, yet that is precisely what current discussions suggest with regard to Indigenous peoples.

Access and benefit sharing arrangements have become the paramount agenda in international fora. In particular, the current efforts to elaborate an "international regime on access and benefit sharing" taking place in the CBD's Ad Hoc Working Group on Access and Benefit Sharing will facilitate the exploitation of traditional knowledge and genetic resources, all in the name of sustainable development.

Discussions taking place in the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) suggests that current or modified forms of intellectual property rights can be used to protect traditional knowledge. It has been proposed that Indigenous peoples document their knowledge in registries or databases in order to establish proof of prior art for patent applications. In fact, WIPO is facilitating access to member states' collection and databases of Indigenous knowledge. In Indigenous territories, the primary means of protection and transmission of biodiversity-related traditional knowledge continues to be through customary laws, traditional practices, and oral histories. Traditional knowledge is dynamic, not static and cannot simply be documented and "fixed in a tangible form" to meet intellectual property law requirements. Community patents or marks proposed by WIPO are not appropriate forms of protection either because they provide only short-term protections for the sole purpose of commercialization.

It has further been asserted that indigenous knowledge already publicly released is within the “public domain”, which means free and open access by all. Indigenous peoples have asserted that with respect to Indigenous knowledge that is already documented or in registers or databases, this knowledge is NOT in the public domain, and Indigenous peoples retain all rights over the ownership and use of this knowledge. Similarly, any Indigenous knowledge acquired without prior and informed consent is not in the public domain, and all rights remain with the affected Indigenous peoples. Mechanisms are necessary for the repatriation of Indigenous knowledge and genetic resources that have been illegally appropriated. Indigenous knowledge - and genetic resources should be classified as inalienable cultural heritage which is not subject to the laws relevant to public domain.

WIPO’s toolkit purporting to offer States model laws for integration into national legislation to protect cultural expressions and artforms is inadequate and inappropriate in many aspects. For example, these model laws propose creating “competent national authorities”, in effect designation States as the gatekeepers for the use of Indigenous knowledge. The only competent decision makers regarding the protection and use of indigenous knowledge are the Indigenous peoples themselves.

There is urgent need to halt the misuse and misappropriation of traditional knowledge and associated biological resources, innovations and practices. Indigenous peoples are seeking international standards and mechanisms that ensure equity, justice, and respect for our collective rights. We recognize that our traditional knowledge constitutes the collective heritage and patrimony of our peoples, and the genetic material contained within the flora and fauna around us constitutes our sustenance. Thus, we are refusing to place economic value on these things for the economic exploitation by others.

We urge the Permanent Forum to help defend the fundamental rights of self-determination of Indigenous peoples and our right to grant and deny access to our traditional knowledge and associated biological resources and territories.

We ask the Permanent Forum to intervene in the various UN Fora to ensure the truly *sui generis* systems of protection of Indigenous peoples are protected. These *sui generis* systems are based on our customary laws and traditional practices. Our existing protection systems are legitimate on their own right and any new mechanisms for protection, preservation and maintenance of traditional knowledge and associated biological resources must respect and be complementary to such existing systems and not undermine or replace them.