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Collective Statement of Kanaka Maoli Indigenous Hawaiian Peoples
of Ka Pae `Aina o Hawai`i
Agenda Item 4(e): Culture

Agreeing Organizations:

Kamakakuokalani Center for Hawaiian Studies
Na Koa Ikaika o Ka Lahui Hawai`i
Waikiki Hawaiian Civic Club
Prince Kuhio Hawaiian Civic Club
Ka Lahui Hawai`i
The Koani Foundation
`Ilioulaokalani Coalition

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This statement is made on behalf of a coalition of organizations from Hawai`i. The Kanaka Maoli worldview is governed by the cultural principles of pono (righteousness), malama `aina (caring for the land), and kuleana (responsibility). Within this worldview, the Earth and her myriad life forms (biological diversity) are kinolau, the earthly body forms of the Akua. Every life form possesses living energy that sustains each other creating a familial, interdependent, reciprocal relationship between the Akua (creator), the `aina (land), and the kanaka (people) in fine balance and harmony.

The following are our recommendations.

I. RECOMMENDATIONS

A. Permanent Forum

1. We urge the PF and all the UN agencies to recognize and implement the recommendations of Indigenous peoples relating to the protection and promotion of Indigenous knowledge including collective declarations, such as the Paoakalani Declaration, a unifying statement of the Kanaka Maoli peoples of Hawai`i that collectively states the responsibility to determine a pono (righteous) future for Hawai`i nei, her culture, and Indigenous peoples;
2. We urge the PF on Indigenous Issues to work to promote the adoption of the Draft Declaration on the Rights of Indigenous Peoples. Article VII would allow indigenous peoples to refine and reestablish authority on cultural identity;
3. The PF is requested to 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, UNESCO, UNDP and the World Bank among others;

4. The PF is requested to 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.
5. We request the PF to participate in the Ad-Hoc Working Group on Access & Benefit Sharing, the Ad-Hoc Working Group on Article 8(j) and Related Provisions, the WIPO Inter-Governmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), especially in relation to its work on sui generis protection of traditional knowledge.
6. We request the PF to 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.

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 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, UNESCO, UNDP, and the World Bank be urged to advance the exploration of non-intellectual property approaches and tools for the protection of indigenous knowledge in consultation with Indigenous peoples;
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).

D. Member States

11. We urge all UN member states to implement into national legislation the Akwe: Kon Guidelines contained in E/C.19/2004/CRP.3 adopted at the CBD's Seventh Conference of the Parties (COPVII) and contained in the COP

Decision VII/16 A-1. These Guidelines are for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities.

12. We request that the PF urge observer member states and UN agencies to recognize Kanaka Maoli Native Hawaiians as the indigenous peoples of Ka Pae 'Aina o Hawai'i, the archipelago of Hawai'i;
13. We request that the PF recommend that States consider constitutional and other legal reform and educational reform to recognize and respect cultural, religious and linguistic diversity and spiritual practices, within the framework of international human rights standards, and to eliminate all forms of discrimination and segregation that has deepened historic inequalities. We also request a written response by the States regarding this matter.
14. We request that the PF urge States to recognize the cultural and historic sites of all Indigenous Peoples and cease abuse of them for development and further exploitation regardless of their interest in scientific inquiry.
15. We request that the PF urge observer member states, in particular the USA, to demilitarize Hawai'i.

II. DISCUSSION

A. Imposition of Western Intellectual Property Rights on Indigenous Knowledge and Cultural Property

On October 3-5, 2003, Kanaka Maoli of Ka Pae 'Aina Hawai'i gathered at Ka 'Aha Pono- Native Hawaiian Intellectual Property Rights Conference- and united to express our collective right of self-determination to perpetuate our culture under threat of theft and commercialization of the traditional knowledge of Kanaka Maoli, our wahi pana (sacred places) and na mea Hawai'i (all Hawaiian things). The Paoakalani Declaration is a unifying statement that collectively shares the responsibility to determine a pono (righteous) future for Hawai'i nei, her culture, and indigenous peoples. It specifically addresses Traditional Knowledge, Cultural Expressions and Artforms in Articles 10-16. This declaration was provided to the Permanent Forum under Agenda item 4(f) on Education.

Based on Indigenous peoples unqualified right of self-determination, we have the right to protect our Indigenous knowledge according to our customary laws and traditional methods. Indigenous peoples are greatly concerned over the application of intellectual property rights over genetic resources and traditional knowledge. The short term and individual nature of intellectual property rights conflicts with the collective rights, long-term protection, and customary management systems of Indigenous peoples.

The World Intellectual Property Organization (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. However, this is untrue because intellectual property rights, whether the traditional type like a trademark or modified such as a community mark, are short term protections for the sole purpose of commercialization. Moreover, IPRs fail to acknowledge the customary systems of Indigenous peoples to safeguard and protect our traditional knowledge.

There is urgent need to halt the misuse and misappropriation of traditional knowledge and associated biological resources, innovations and 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 be complementary to such existing systems.

B. The Desecration and Destroying of our Sacred Sites- Examples-Mauna Kea and Kaho'olawe

We propose once again the recommendation made by the Permanent Forum in May 2003, regarding constitutional, legal and educational reform. Our sacred sites are being desecrated and destroyed and this has a profound affect on our cultural and spiritual practices.

An example of the occupation, desecration and destroying of indigenous sacred sites by some of the richest and largest nations in the world, in violation of international law, traditional and customary rights and U.S. domestic laws meant to protect human, civil, and cultural rights and the delicate environment is Mauna Kea.

Mauna Kea, is one of two great mountains located on Hawai'i's largest island of the archipelago. It summit rises out from the depths of the vast Pacific ocean reaching approximately 14,000 feet in elevation. It is considered the highest place on earth when measured from the ocean floor.

Because of Mauna Kea's pristine and rarified atmosphere, it has become a highly sought after location for doing world class astronomy and military research. Indeed it is the world's premiere astronomy site and hosts the world's largest and most advanced astronomical facilities.

From the Native Hawaiian perspective, the issue is of a cultural, religious and spiritual nature. Although Mauna Kea is not a typical house of worship by dominant cultural standards, it is, in our cultural understanding and cosmology, a temple of the highest order.

Mauna Kea is also the burial ground of our highest born and most sacred ancestors and the home to some of the most rare and endangered species in the world. One bug species of Mauna Kea has been reduced by 99.7%. According to the Kumulipo (Hawaiian Chant of Creation), before man was created all other living things were created, when the process of Creation was complete, the gods too were complete and walked the earth with

man. It is believed that all living things no matter how big or small have purpose and make complete the whole. When a living thing ceases to exist, the process of creation is unbalanced and begins to unravel.

Moreover, we have been taught that the relationship between our ancestors and ourselves is one of interdependence- as the living, we have a kuleana (responsibility) to care for our kupuna (ancestors). In turn, our ancestors respond by protecting us on the spiritual side. Hence, one side cannot completely exist without the other.

There has been significant work done under the CBD to address the impacts on sacred places such as Mauna Kea. We commend the work of our Indigenous sisters and brothers, the CBD's Ad-Hoc Working Group on Article 8(j) and Related Provisions, and the Conference of the Parties (COP) to develop and adopt the Akwe: Kon Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities. Unfortunately, the Guidelines are only voluntary in nature at this time, however, they have been designed for states to integrate into their national laws, which will be one positive step for states towards their obligation to ensure the rights of Indigenous peoples. Appropriate implementation of the Guidelines of course will require the "participation of indigenous and local communities in any bodies established by Governments at national, subnational and local levels, and in consultation with indigenous and local communities, in the assessment of proposed developments in which such communities have an interest."

Another example of the desecration and destroying of our sacred sites is that of the island of Kaho'olawe, the only island named after one of our many gods, Kanaloa. Kaho'olawe is the piko (navel), the womb, and child that has been desecrated for many years by the military as a bombing site. The island was traditionally used as training grounds for our people to strengthen their navigational skills, to learn the winds, rains, and ocean currents. Not until the time that Kaho'olawe is returned to the indigenous peoples of Hawai'i will we be able to malama (care for) mother earth and in turn malama the people of the land. This is a representation of how the indigenous peoples of Hawai'i are viewed in our own land.

C. Desecration of Bones of our Ancestors and Funerary Objects

Indigenous Peoples' decisions regarding our ancestors' bones and funerary objects must be recognized. We have the right to reintern our bones and funerary objects according to our own customs. These objects were stolen from their resting places and used for anthropological and scientific studies, DNA and genetic research, and exhibition all of which are desecrations of our ancestors' bones. Well-known institutions such as the Bishop Museum are currently requesting that bones be dug up, housed at the museum, and put on display. As indigenous peoples of Hawai'i we consider this very inappropriate behavior. These acts are sacrilegious and an affront to our cultural and traditional practices.

D. Cultural Identity

The rich heritage and traditions of the lands of my ancestors, Hawai'i, attracts millions of people from around the world to take part in my indigenous culture. However, seldom is it ever available to Hawai'i's indigenous people. At times most tourist leave Hawai'i with more of a sense of its native traditions and practices than those indigenous to the sands of Hawai'i, born and reared.

We present such issues as cultural integrity and identity because it is a key component to the well being and sustainability of any indigenous culture. Moreover, I will opine that the ability to learn or regain one's cultural identity and integrity is, perhaps, one of the largest factors in healing the social ills of not only my people and our lands but also indigenous peoples and their lands throughout the world.

When the Draft Declaration of Indigenous Peoples is codified in its original form, it will allow us as indigenous peoples to refine and reestablish authority on cultural identity. After all, who best to reestablish and refine that authority than those whose ancestors make up that identity? The Draft Declaration of Indigenous Peoples when adopted, recognized, and implemented by every member of the United Nations will serve as a momentum of justice for *all* indigenous peoples. Give control back to indigenous peoples to determine and define who we are.