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Loea Akiona

UN PERMANENT FORUM ON INDIGENOUS ISSUES
Sixth Session
New York, 14-25 May, 2007

Agenda Item (9) – Future Work of the Forum – Protection of Traditional Knowledge

Joint Intervention

Kamakakuokalani Center for Hawaiian Studies, Ka Lahui Hawaii, Na Koa Ikaika o ka Lahui
Hawaii, Waikiki Hawaiian Civic Club, Ilioulaokalani Coalition, Koani Foundation

Aloha Madame Chair and members of the Permanent Forum on Indigenous Issues,

We would like to thank the UN Permanent Forum Pacific Member and Special Rapporteur
Mick Dodson for his excellent paper on Indigenous Traditional Knowledge
(E/C.19/2007/10).

We strongly endorse and support the recommendation contained in Paragraph 24 of the report
and the methodology relating to an expanded study as set forth in subsection A, B, C, and D
of the report (pages 9-18).

**We endorse the same recommendations as those made by the Pacific Caucus, Asia
Caucus, and Arctic Caucus.**

Recommendations:

1. **Recommend that the UNPFII elaborate its role and its strategy to provide
leadership and guidance on the theme of Traditional Knowledge.**
 - ⇒ **Commission a Study on Sui Generis Protection of Traditional Knowledge**
 - ⇒ **Maintain close inter-action with the various UN agencies active on this
theme**
 - ⇒ **Encourage and cooperate with universities and research bodies**
 - ⇒ **Promote a process of awareness-raising on the protection of Traditional
Knowledge, including regional and sub-regional workshops**
 - ⇒ **Recommend that the CBD facilitate the holding of an Indigenous Peoples
Expert Workshop back-to-back with the IASG meeting to allow technical
advice and information**
2. **The UNPFII to appoint Mr. Michael Dodson as a Special Rapporteur to
undertake a study considering a shift in the focus on the protection of
indigenous traditional knowledge away from intellectual property law to
protection via customary law. The study should consider how indigenous
traditional knowledge could be protected at an international level by utilizing
customary law, including the extent to which customary law should be reflected,
at national and regional levels.**
3. **The UNPFII at its Seventh Session appoint five members to hold specialized
meetings on indigenous traditional knowledge during its sessions.**

For many years there has been a number of international instruments which recognize the right of indigenous peoples to protect and enjoy their traditional knowledge these include: Agenda 21; the UN Convention to Combat Desertification, the Berne Convention (the Universal Declaration of Human Rights); the Convention on Biological Diversity; and the Rio Declaration on Environment and Development.

As pointed out by Special Rapporteur Dodson, there are also many examples of domestic laws that recognize indigenous peoples' rights to traditional indigenous knowledge.

These instruments however have not addressed the concerns of indigenous peoples relating to the protection of their traditional knowledge and their assertion that their traditional knowledge must be protected by and through the application of customary law.

Biopiracy and the patenting and copyrighting of traditional knowledge related to biodiversity are expending controversies that can not be addressed under the existing intellectual property regime of western law. It is evident that the western intellectual property regime is facilitating the theft of indigenous traditional knowledge and the privatisation of life forms including plant, animal and human life forms which are the property of indigenous peoples and the basis of indigenous culture.

In 2003, 2004, and April 2007, Kanaka Maoli of Ka Pae 'Āina 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 (sites of significance to Kanaka Maoli), and nā mea Hawai'i (all Kanaka Maoli practices). The Paoakalani Declaration, a cultural framework, was endorsed as our collective responsibility to determine a pono (righteous) future for Hawai'i nei, her culture, and indigenous peoples. Since 2003, the Declaration has been shared with rightsholders and stakeholders in Hawai'i, Indigenous Peoples throughout the world, and submitted at numerous global meetings.

Conference attendees include kumu hula (traditional dance teachers), elders skilled in lā'au lapa'au (traditional medicines), traditional and contemporary artists, farmers, teachers, academics, and attorneys. Everyone actively participated in discussions regarding the protection of our Traditional Indigenous Knowledge and Intellectual Property Rights.

Many of these issues have become extremely contentious and increasingly the problems and issues involved native cultural practitioners against academic and industry researchers. Examples of these controversies include:

1. The copyrighting of Hawaiian traditional chants by Disney, Inc, for exclusive use in the Lilo and Stitch movie and cartoon series.
2. The patenting of three (3) hybrid taro and related University efforts to "sell" taro seedlings to traditional farmers.
3. Bioprospecting and patenting of life forms and natural resources belonging to the public trust but unclaimed by the State.

We are also working on a publication regarding traditional knowledge and intellectual property rights and have copies of the call for papers at the back of the room if any of you are interested in submitting a paper. (kaahapono.com)

Kanaka Maoli will continue to holomua (move forward) and to advocate at all levels (international, national, regional, and local) for the adoption of a policy that recognizes and protects our rights to our traditional knowledge, cultural expressions and artforms, or natural and biological resources and ensures a system of equitable benefit sharing by those conducting research relating to, or using or seeking to use our traditional knowledge, cultural expressions and artforms, or natural and biological resources.

E holomua kākou no ka pono o nā `ōiwi o kēia hanauna a me nā hanauna e hiki mai ana.