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EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES

EIGHTH SESSION, July 2015, Geneva, Switzerland

Statement by the Indigenous World Association, Laguna-Acoma Coalition for a Safe Environment and Na Koa Ikaika Ka Lui Hawaii

Item 7: Study and Advice on the Promotion and Protection of the Rights of Indigenous Peoples with respect to their cultural heritage

Introduction

On behalf of the Indigenous World Association, the Laguna-Acoma Coalition for a Safe Environment, and Na Koa Ikaika Ka Lui Hawaii, I would like to address two areas of the study in the time I have: a wholistic view of the concept of cultural heritage, and rights to lands and territories.

Wholistic view of cultural heritage

First, we appreciate the efforts taken by this body to provide an overview of the international legal framework and jurisprudence regarding the rights of indigenous peoples with respect to their cultural heritage. This is a useful instrument for sharing with many of those people in our communities who are currently faced with situations that threaten their cultural heritage.

We welcome the observation made in paragraph 8 of the study that **“the traditional categorization of heritage as ‘tangible,’ ‘intangible,’ and ‘natural’ heritage demonstrates its limitations.”** We agree that it is important to adopt a wholistic approach to cultural heritage and acknowledge that the “watertight legal regime of protection for cultural heritage” has proven in numerous cases to be problematic for indigenous peoples. However we believe the report could be strengthened by incorporating this thinking in discussions later in the report on Lands, territories and cultural heritage (paras. 53-57) and Traditional knowledge, intellectual property, and cultural heritage (paras. 58-59), as well as in the Advice section. For instance, paragraphs 56, 59, and paragraph 7 of the Advice make reference to “cultural and natural values” but do not make reference to indigenous epistemologies or cosmovisions. It is these epistemologies that shape and form cultural values.

Responsibility with Regard to Lands and Territories

Second, while we appreciate the observations made with regard to Lands, Territories and Cultural Heritage in the study, we wish to stress another dimension of indigenous peoples' relationship to lands and territories. The language of the study fails to include what we consider essential: the **responsibility** that accompanies these rights. In the negotiations that led to the adoption of the UNDRIP, one of the concepts that we as indigenous advocates insisted be included in Article 25 was this concept of responsibility to future generations. Thus, Article 25 includes both an expression of the right to maintain and strengthen our distinctive spiritual relationship with our traditionally owned or otherwise occupied and used lands, territories, AND our responsibilities to **uphold our responsibilities to future generations** in this regard. We ask that EMRIP incorporate this dimension as you finalize the study.

Landscapes

Finally, the study mentions "sacred sites" in paragraphs 6, 17, 54, and paragraph 13 of the Advice. In our advocacy to protect places sacred to us, especially in the face of potential uranium mining in the southwestern United States, we have worked hard to include a more expansive view of places sacred to us. Often, government agencies and private mining companies take the word "site" to mean something measurable, so that they can simply fence it off and proceed with activities, saying they have done their part to avoid doing damage to cultural resources. This thinking misses the point. What we are talking about are cultural landscapes, and viewsheds, which are integrally related to our epistemologies, our cosmovisions and thus our very identity. Many indigenous peoples use relational words to describe our lands and territories. In the languages of both my mother and father, we call the land Our Mother. And in the words of the late Tonya Frichner, "Mother Earth is a relative, not a resource." We therefore ask that EMRIP expand its language in this study to include **cultural landscapes** and **viewsheds**.

We have a number of comments on the rest of the report and in the interest of time, will submit them separately.

Thank you.