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22nd SESSION of the UNWGIP

AGENDA ITEM 5(a) PRIOR INFORMED CONSENT

BY BABA FESTUS

ORGANISATION IPACC (INDIGENOUS PEOPLES OF AFRICA COORDINATING COMMITTEE)

This intervention refers to the patenting of the Hoodia Gordonia, and the San people of Southern Africa.

The failure to obtain prior informed consent from indigenous peoples has rightly been identified as a fundamental source of injustice in contracts, treaties, and executive acts of governments and other agencies.

This fundamental aspect of contract law, namely that all contracting parties should be fully aware of the nature, extent and consequences of intended actions, has likewise been entrenched in various international instruments, which specifically require prior informed consent from the holders of traditional knowledge.

Article 29 of the UN Draft Declaration on the Rights of Indigenous Peoples states that

Southern Africa

> "Indigenous Peoples have the right to own and control their cultural and intellectual property.

In a similar vein, article 8(j) of the Convention on Biological Diversity calls on governments to

> "respect, preserve and maintain the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity."

It is regarded as implicit in this article that such indigenous communities have the right to equitable compensation for sharing their knowledge with bioprospectors, **prior to** any appropriation of information.

The Hoodia case is a typical example of how bioprospecting companies have abused the Intellectual Property Rights of indigenous peoples.

Based upon information on traditional knowledge of San healers, namely that the Hoodia plant was effective in curbing thirst and appetite, the South African Council for Scientific and Industrial Research (CSIR) first isolated the active ingredient in the Hoodia plant, then without informing the San peoples, obtained a worldwide patent on their "discovery", named "P57", in 1996. The rights to this patent were licenced to a British pharmaceutical company, who then further licenced it to Pfizer Inc of the USA.

The San peoples only discovered that the Hoodia had been patented in June 2001, and immediately instituted legal action to challenge the theft of their traditional knowledge. The San organization WIMSA (Working Group of Indigenous Minorities of Southern Africa, coordinated the challenge.
This legal challenge received crucial support from a range of indigenous peoples' movements and NGOs. Rather than challenging and thus extinguishing the patent, the San decided to negotiate a benefit sharing agreement so that they would be assured of fair compensation in respect of their IPR. In March 2003 a benefit sharing agreement was finalized, which gives the San a 6% royalty on all future sales emanating from the patent.

In conclusion, the following points are noteworthy:-

- The San peoples of Southern Africa regard heritage as indivisible, and are committed to sharing the financial benefits from the patent equitably with all of the various San peoples across four countries of Africa. There has been no dispute about this principle.
- The CSIR apologized for their failure to obtain 'prior informed consent. This apology was accepted, with a warning to it and other bioprospectors that such behaviour will not be tolerated in the future.
- All Indigenous peoples should be more respectful, and vigilant about the protection of their own traditional knowledge.

IPACC will provide further information on this case at its public meeting at 6pm on Wednesday 21 July.

Thank you Mr Chairman.