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For the Recovery and Protection of Traditional Indigenous Knowledge

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CALL OF THE EARTH

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Introduction

For several reasons, traditional knowledge has been a critical issue during the early years of this century. Since the enactment of intellectual property laws, the traditional system has never considered indigenous knowledge as a part of it. Now after hundreds of years of enforcement under the western traditional system, this concept is becoming obsolete. The fact that a large percentage of the worlds population depend on traditional knowledge for survival, that is to say, to satisfy the need for health care or food security, traditional knowledge is gradually being acknowledged. However, indigenous communities are still waiting to receive the benefits or royalties for their traditional and ancient knowledge.

With great concern, we also note the large number of applications for patents based on traditional knowledge or biological material which have been illegally extracted from indigenous lands. This is why it is so important to protect the resources of biological diversity as well as those of traditional knowledge; the autonomy and self-determination we defend so strongly depends on this protection.

Faced with this threat, we are reviewing the different regulations in force to see if any of them are useful to protect our rights. While carrying out this study, we have come to the conclusion that there is very little we can use, almost nothing. Instead, new regulations like the *sui generis* model have been developed to satisfy our demands.

This task is carried out with the support of some international organizations, especially the organizations which are part of the United Nations (UN) and some governments that have dared to rule on a subject that frightens most people away.

Actions at the international level

While in recent years some governments in the American continent and other regions of the world have amended their intellectual property protection laws or their patent systems, these amendments still fail to protect Indigenous Peoples traditional knowledge of.

Instead, they continue to favor the patents of multinational and international companies which illegally use Indigenous Peoples traditional knowledge and the biological diversity of our regions. Furthermore, these companies are granted protection as if they are victims of the system - a system which they created themselves and which works to the detriment of developing countries, that is to say our people.

However, we should acknowledge other significant achievements made by the implementation of laws to protect, at least to some extent, traditional knowledge. This is especially so in Abya Yala (America), where very important contributions made by Indigenous Peoples have brought about changes in the political constitutions which include such protection. An example of this is the Political Constitution of Ecuador of 1988, which, in section 84.9, declares “the recognition of collective intellectual property of traditional knowledge, its importance, use and development pursuant to the provisions of Law”.

Likewise, the Political Constitution of Venezuela of 1999, in Chapter VIII, Rights of Indigenous Peoples, section 124, declares that: “The collective intellectual property of collective benefits is warranted and protected. The registration of patents based on these resources and on traditional knowledge, technology and innovations of Indigenous Peoples is forbidden. Any activity related to genetic resources and knowledge associated to them shall yield collective benefits. Patent registration on these resources and traditional knowledge is forbidden”.

The constitutional precepts mentioned above, are now being implemented by other countries which have adopted, or are in the process of adopting, laws to protect Indigenous Peoples traditional knowledge. This is due to the realization that theft or piracy is also an attempt against the national sovereignty of these countries. We hereby urge countries which do not have constitutional precepts to start working, because it is necessary to have a legal framework in place for effective implementation. Without any such legal framework, such constitutions would be just empty words.

With regards to the creation of new laws to protect Indigenous Peoples rights including traditional knowledge, laws which are known as the *sui generis* system, we must emphasize the

fact that we are creating new legal instruments, new rights, which do not exist in the western world. For example, the recognition of collective rights which consequently recognize that traditional knowledge is of collective use and origin, cannot be owned by only one person, and has neither a date of birth nor death. That is to say, Indigenous Peoples should also be seen as the creators of the new laws or innovators of international law.

We would like to emphasize that new concepts which endorse the validity, respect and protection of traditional knowledge are based on the relationship that our people have with nature. The relationship between the mankind and Mother Nature constitutes a whole in itself, and, when it becomes evident in different gestures or cultural, medical and artistic manifestations, it belongs to the community or the people that have developed and passed it from one generation to the next, since time immemorial up to the present.

That which is not owned by only one person cannot be sold or be the property of any single company. It is a part of the nature and the expressions of a community and is at the service of the society that has developed it; therefore, it is at the service of mankind. Thus, Indigenous Peoples should be recognized as the true owners, for they have maintained and innovated it for centuries. Indigenous Peoples should have the right to benefit from the profits and royalties, as stated in the international agreements which protect the traditional systems of patents or intellectual property.

If this is not so, the western and industrialized world, as well as international organisms such as the United Nations, would be in debt to the Indigenous Peoples forever. Thus, these organizations are obliged to create a new international legal system which protects, promotes and respects traditional knowledge.

Another new concept which is emphasized is that of Bio-Cultural property, which is defined as follows: *“knowledge, innovation, practices and cultural expressions of Indigenous Peoples and local communities which are often shared and are intrinsically linked to traditional territories and natural resources, including the diversity of genes, varieties, species and ecosystems, cultural and spiritual values and customary laws originated within the socio-ecologic context of these communities”*. (IIED / Call of the Earth, 2005)

Nowadays, many actions are being taken worldwide to place traditional knowledge where it belongs - next to the new scientific achievements of the western world. A new creation would never exist without a creator or a past, science itself would not exist. Furthermore our ancestors would be disrespected and there would be no past or pride if we did not struggle to give traditional knowledge the importance it deserves.

Not only are Indigenous Peoples and organizations claiming the importance of traditional knowledge, but also experts such as Erica-Irene Daes, who, in 1993, wrote the “Estudio sobre la Protección de la Propiedad Colectiva e Intelectual de los Pueblos Indígenas (E/CN.4/Sub.2/1993/28)” [“Research on the Protection of Collective and Intellectual Property of Indigenous Peoples”]. This is one of the first studies within the UN system after the Working Groups on Indigenous Peoples. Other documents include the provisions of the Convention on Biological Diversity (CBD), particularly the ones referring to “indigenous knowledge, innovation and practices” such as section 8(j) and related sections. Furthermore we should not forget the first documents on the issue published by the UNDP.

These initiatives, promoted by the participation of indigenous representatives or experts, have caught the attention of other organizations in the United Nations. However, from our point of view, there should have been united efforts and criteria from the beginning, recognising that indigenous communities are behind these initiatives.

Another important fact is the participation of the World Intellectual Property Organization (WIPO) in recent years. WIPO, through its Intergovernmental Committee on Genetic Resources, Intellectual Property, Traditional Knowledge and Folklore, held its 8th session in Geneva in June, 2005, where the participation of Indigenous Peoples was taken seriously and important decisions were made in the pursuance of new ways of protecting traditional knowledge.

In the American continent, during the current discussions about the American Declaration on the Rights of Indigenous Peoples of the Organization of American States, there is a section that provides for the protection of cultural and intellectual property, which follows the guidelines established by the Universal Declaration on the Rights of Indigenous Peoples. These rights constitute essential rules for the survival, dignity and welfare of Indigenous Peoples in the world, as stated in the declaration itself. We hope that in a few years this section will become part of the international legal instruments acknowledged by the United Nations.

We can continue mentioning other international organizations and institutions that have made important statements regarding this issue, but we consider that it is time to organize an international conference to discuss the protection of traditional knowledge and to create the foundation of what may be an international agreement on this topic. In this way, the efforts of Indigenous Peoples to give positive answers to the serious problems that affect mankind will be recognized.

The Situation in Panama

In 2000 in Panama, as part of the search for new regulations to protect Indigenous Peoples traditional knowledge, Law 20 was enacted, entitled “Special Intellectual Property Regime Governing the Collective Rights of Indigenous Peoples, for the Protection and Defense of their Cultural Identity and their Traditional Knowledge, and Other Provisions”. This law is considered *sui generis* by the WIPO and other indigenous or non-indigenous organizations which are dealing with this issue.

This law was an initiative of indigenous authorities and experts from Panama, with advice from national institutions such as the Ministry of Commerce and Industry, the House of Representatives, as well as international institutions like the WIPO.

As this was the first law to deal with this subject, it is not perfect, but it is an effort which should serve as a model or example for other communities and countries currently working in this field. It has to be improved and modified so that it becomes a legal instrument for the protection of traditional knowledge.

After the enactment of this law, important registrations for the collective rights of Indigenous Peoples have been made. For example, the use of the “Mola Kuna Panama” Collective Right (a dress worn by Kuna women and any innovations involving the Mola) is now recognized as an artistic expression, as traditional knowledge that belongs to the Kuna people and that has been passed from one generation onto the next. Other examples are the registration of the Nahua or dress worn by the Ngobe women, the hat and the bags made out of natural materials and paints and any innovations thereto, as property of the Ngobe people, and the *tagua* and the baskets of the Embera people, which are going through the registration process as artistic expressions of Indigenous Peoples.

These are some examples of registered rights of which the Indigenous Peoples, as mentioned above are the true owners, pursuant to the laws of Panama. (see Law 20, 2000, attached hereto)

Finally, we hereby urge intergovernmental organizations of the United Nations System to take Indigenous Peoples suggestions or demands into account, in order to prevent traditional knowledge from disappearing or to prevent companies, countries and people of the industrialized world from benefiting, not only from our misery but also from our traditional knowledge.

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(Document prepared by Atencio López)