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*“NGO in Special Consultative Status with the Economic and Social Council of the UN”*

## **Statement to the 5<sup>th</sup> session of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resource, Traditional Knowledge and Folklore**

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World Intellectual Property Organization Headquarters, Geneva, Switzerland

### **Agenda Item No. 7: Future Work: Participation of Indigenous and Local Communities and Overview of Outcomes and Activities of the Intergovernmental Committee**

**Presented by Victoria Tauli Corpuz, Executive Director, Tebtebba**

The misappropriation, biopiracy and abuse of our genetic resources, traditional knowledge and traditional cultural expressions is taking place in many of our territories on a day to day basis. So for us, the issues being discussed in this Committee are urgent and crucial for our continuing existence and survival as distinct peoples in this world. It is with this background that we present some of the proposals for the future of this Committee and the participation of indigenous peoples and local communities.

Paragraph 18 of WIPO/GRTKF/IC5/12 says that “IP mechanisms (whether conventional IP rights or specific *sui generis* forms of protection) can be useful, but are unlikely to be sufficient in themselves.” This confirms what we have been saying all along that the IPR system cannot and does not adequately protect, safeguard and preserve our traditional knowledge, genetic resources, and traditional cultural expressions.

While this conclusion is very clear both from the indigenous peoples' experiences and also from the studies and analytical work done by this Committee, we observe that there is still an imbalance in terms of the proposals for future action. Much of what is written in the documents extensively deal with IPR protection. This is understandable as the WIPO mandate is to administer IPRs treaties and conventions. However, if the Committee has established this fact, at the least, it should come up with some proposals on how to proceed and identify other UN bodies which can carry out the work if WIPO cannot do it.

Paragraph 32 of this same document says “ The Committee's discussion of positive and defensive IP protection of TK and TCEs stemmed from, and was linked to the concerns and interests expressed by local and indigenous communities. This raised the question whether protection systems based on IP rights were appropriate and suitable

for promoting the interests of traditional communities, who may see IP system as reflecting values incompatible with their own. In some cases, the concern was expressed that IP protection of TK and TCEs was inappropriate as it could lead to the alienation, deterioration and commodification of culturally sensitive subject matter. Similarly, the concern was expressed that traditional communities should be supported in their endeavors to preserve and maintain traditional methods of preserving traditional knowledge and cultures and passing them between generations within the communities.”

Again, this confirms further the views and experiences of many indigenous peoples in various parts of the world. We held a workshop on “Biodiversity, Traditional Knowledge and Rights of Indigenous Peoples” from 3-6 July 2003, and indigenous peoples from Asia, Africa, the Arctic, North America and Latin America participated. What clearly came out from this workshop is that the safeguarding, preservation and protection of our traditional knowledge, traditional cultural expressions and genetic resources ( which form part of our ancestral heritage) cannot be delinked from our struggles to assert our rights to self-determination and our rights to have control over our territories and resources.

### **Proposals for the future of this Committee**

We agree with those who have said that the studies and discussions in this committee could already provide us enough ideas to pursue more relevant actions and programs. If this Committee should continue we propose that it should put the proper balance in terms of the studies, actions, and technical assistance programs it will undertake in the future. It should seriously look into what is wrong with the IPR system see where the system is creating problems for indigenous peoples. It should also develop further its work on non-IP forms of protection and safeguarding. Among the possible areas which it can take a look into and programs it can undertake are the following;

1. A study on the relationship between customary laws and indigenous peoples’ systems of protection and the IPR system.
2. A study of the extent and forms of biopiracy which happened and continues to take place in indigenous peoples’ territories. This study should come up with recommendations on what remedies should be taken to redress these injustices and violations of indigenous peoples’ rights to have control over their knowledge, their cultures and their resources.
3. It should review of the standards of patentability of WIPO member states which can show why there are bad patents proliferating which is a major factor in the increasing biopiracy of indigenous peoples’ knowledge and genetic materials.
4. Non-IP forms of protection and safeguarding should be explored and developed further. If indigenous peoples prefer that non-IP forms of protection should be given priority over IP forms then technical assistance programs to strengthen the development of such should be given full support by WIPO and other intergovernmental organizations.
5. We agree that the negotiation of norm-setting processes should commence towards the creation of international legal frameworks for the protection of

traditional knowledge, genetic resources and traditional cultural expressions. This can be done jointly with other international organizations with close collaboration with indigenous peoples. The steps which could be taken for this process are as follows;

- The IGC can explore the possibility of organizing inter-institutional processes between different intergovernmental bodies which can develop these international legal frameworks. There are already precedents of this kind of process which can be further examined. The Rotterdam Convention on Prior Informed Consent Procedures for Certain Hazardous Chemicals and Pesticides in International Trade was done jointly by UNEP and FAO. Then we have the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations which was a result of the collaboration between WIPO, UNESCO and ILO.
- The IGC can examine these various experiences and see how feasible such mechanisms could be for the creation of internationally binding frameworks for the protection and safeguarding of traditional knowledge, traditional cultural expressions and genetic resources.
- The Permanent Forum on Indigenous Issues can bring together representatives of various bodies, i.e. WIPO, CBD, UNEP, UNCTAD, WTO, Office of the High Commissioner of Human Rights, ILO, FAO etc. and representatives of indigenous peoples for a technical meeting to look into the various recommendations for legally binding international instruments. This meeting can come up with recommendations on the roles which will be shape a program of work and identify what roles the various bodies will play. In the Commission of Human Rights, it is the Working Group on Indigenous Populations which is mandated to do standard setting on indigenous peoples' rights. It is important therefore to include this body in the technical meeting.

### **Proposals for the Participation of Indigenous Peoples and local communities**

It is encouraging to see that this Committee has recommendations for the participation of local and indigenous communities in the work of the Committee. We fully support the proposal to create a fund for indigenous peoples. This fund should be administered by indigenous peoples who are independent from the States. I have the privilege of being a member of the Board of Trustees of the UN Voluntary Fund for Indigenous Populations since 1993 and I am proud to say that we had acted independently from the States and selected indigenous peoples who will be supported to take part in the Working Group on Indigenous Populations, Working Group Elaborating a Draft Declaration on the Rights of Indigenous Peoples and the Permanent Forum on Indigenous Issues. Many of those whom we brought to these bodies are now responsible leaders of their own communities or organizations and even national, international and regional networks of indigenous peoples.

The fund which WIPO will create can get both from the regular budget of WIPO and from voluntary contributions. We cannot agree to the proposal that the States will be the one who will select the beneficiaries of this fund. We know fully well that there are States who will only choose those who agree with them and there are those who do not even recognize that they have indigenous peoples. To ensure that the independent views of the indigenous peoples communities and organizations will be presented here the States should not in any way be involved in the selection process.

What is important to us is that a fund will be created which should ensure, not only the participation of indigenous peoples in this intergovernmental committee but also to enable them to participate in other relevant WIPO bodies which are addressing issues of importance to them.

We fully support paragraph 11 of WIPO/GRTKF/1C/5/11 which identified various measures to ensure greater involvement of indigenous peoples in the WIPO. This include the following;

- greater involvement in national processes, such as development of national policies and of statements to be made by States at Committee sessions.
- Participation of indigenous peoples and local communities on expert panels.
- Involvement on expert panels.
- Being co-chairs of working groups
- Capacity building at national and local levels
- Inclusion of an indigenous staff member in the unit dealing with subjects covered by the Committee
- Development of a working relationship with the UN Working Group on Indigenous Populations.
- Make available comments and papers of indigenous and local communities on the issues under discussion.

We would like to add that the WIPO should also consider funding indigenous peoples' processes where they can examine the issues, including the documents coming out from WIPO in a collective manner. This is similar to the process which we held last week, a "Workshop on Biodiversity, Traditional Knowledge and Rights of Indigenous Peoples" on these issues. This enabled us to understand better the issues being discussed here and also in other intergovernmental processes addressing issues of traditional knowledge and genetic resources. We wanted to present the statement from this workshop here but we are still getting the final comments from the participants before we can release a final agreed version. We would like to request you, however, that when this is finished we can still officially submit this to the secretariat of this Committee even after the session is over.

Thank you very much Mr. Chairperson.