Biodiversity, Community Integrity and the Second Colonialist Wave

He whare maikhi tu ki roto ki te tuwatawata, he tou no te rengatira; he whare maihi tu ki te wa kie te paenga, he kai na te ahi.

An ancestral house standing inside the community is the sign of chiefliness; one standing in the open is food for fire.

–Maori Proverb

by Aroha Te Pareake Mead

As the Maori proverb above indicates, an ancestral house, or any aspect of heritage which rests within its home community, holds in itself and brings to its people *mana*—respect and sovereignty. If the house or any other aspect of heritage, either tangible or intangible, is taken away from its community and from its context, it becomes at risk of destruction, "food for the fire." And its people are confined to a destiny of mourning for the loss of a beloved and irreplaceable part of their heritage.

Aroha Te Pareake Mead is a Maori activist and works with Taonga Limited in Aoteoara, New Zealand.

For Indigenous communities, the underlying meaning in this proverb is that the life force of that heritage still exists regardless of the physical circumstances around it. An ancestral house will always be part of the heritage of its own tribal community even if it now forms part of a national or international museum collection.

An Indigenous plant, its extracts and seeds, will always be part of the heritage of the community, who have interacted with it for so many generations that the plant has become part of the language of that community, its significance reaffirmed daily in (waiata) songs, (whakatauki) proverbs and (whaikorero) traditional greetings.

The Second Wave of Colonization

The first wave of colonization consisted of the forced misappropriation of Indigenous lands and resources, most often through violence, resulting in mass alienation of Indigenous peoples from their homelands and heritage. The denigration of Indigenous values and practices was sanctioned by religious and social beliefs that tribal peoples (non-Christians) were savages and barbarians, and their cultural traditions "heathen" and evil. Settlers claimed that theft of Indigenous lands served the "public good" and that new technology promised more effective land use, improved farming methods, and new crops. Time proved, however, that new farming technology kept being improved until most farmers could no longer afford it. New methods also brought soil erosion, pesticide pollution, and the final insult, having to buy seeds which were previously saved from the harvest. Where Mother Earth used to be the equalizer for those who used her resources to feed, clothe, shelter and heal themselves and others, technology has turned her into a factory.

The second wave of colonization sets its sights on misappropriating what little remains after the first wave, the "intangibles" of Indigenous cultures–Indigenous knowledge of the environment, preventative and curative healing practices, and particularly traditional uses of Indigenous plants (medicines, dyes, complimentary crops to name but a few).Where the first wave of colonization was made possible by normalizing the violence against Indigenous peoples as in the service of "the public good," the second wave is accommodated and encouraged through national and international legal instruments which allow states and private companies to exercise–through legal and financial norms and standards–external private and exclusive ownership of the tangible and intangible heritage of Indigenous communities. It's not at all coincidental that the justification of this misappropriation is the same: "It's for humanity, for the public good." Before, it was land acquisition. Now, it is acquisition of knowledge and resources. No matter how one looks at it, the result is the same: outsiders forcing the concepts of commodification of resources and acquiring ownership of the ancestors' gifts–lands, resources and knowledge.

Cultural and Intellectual Property Rights

Governments as well as private companies are now clamoring to copyright and patent Indigenous art forms, medicinal plants, languages and even genetic materials. Signatory states to the Convention on Biological Diversity and the UN Conference on Environment & Development's Agenda 21 (1992) are now required to respect and take measures to protect the Intellectual Property Rights (IPR) of Indigenous peoples and local communities with respect to biological diversity. Many States have interpreted these international directives as justifying the redesign of their national IPR legislation to legalize State governance of community assets, but Indigenous peoples around the world view such measures as unnecessary intrusions into the integrity of their communities.

It is neither logical nor practical that the best system for the protection of the cultural and intellectual property of Indigenous peoples resides with states or even with the international community. Protection can only be designed and implemented by Indigenous communities themselves in partnership with individuals and organizations (local, national, regional and international) of their choosing on an informed consent basis. The body most capable of respecting and enhancing the unique needs of an Indigenous community is one initiated, developed and staffed by the community itself. National and international instruments cannot possibly prepare communities for the challenges upon their own structures of leadership and accountability. State instruments should focus on the activities and procedures of companies, but it is clear that many States would prefer to regulate the activities of communities. At a fundamental level there is also the problem of states, as well as the international community, assuming that they have a right to develop standards and legally binding instruments for assets which do not belong to them.

New threats facing Indigenous Communities: A Case Study

The attack on Indigenous communities is constant and significant. Indigenous communities cannot afford to ignore external pressure and simply to hope that ignoring the threats will in time make them go away. A brief examination of the national activities and experiences of the Indigenous communities living in just one UN member State–New Zealand–demonstrates the diversity of IPR issues facing Indigenous communities.

The human genome contains the heritage not just of an individual but of that person's community. For many Indigenous peoples, the concept of "ownership" of a human gene even by the individual is just not accepted. The ownership of a human gene by a company is therefore reprehensible. Within the Pacific, two attempts have already been made to patent Indigenous human genetic material (Solomon Islands and the Hagahai of Papua New Guinea). The Human Genome Diversity Project has targeted over 200 South Pacific Indigenous communities for genetic

sampling. Maori are one of the few not on the list (See article on HGD Project pg. 13, eds.). However, the attempted recommendation to the New Zealand government by Maori—that New Zealand discuss with other Pacific nations the implications of the collection of human genetic materials in the Pacific—fell on deaf ears.

Research within New Zealand on cancer, alcoholism and otitis media (glue ear) has been reported to focus on Maori genetic predispositions to such conditions. In the hands of health insurance companies, genetic screening on the basis of ethnicity involves fundamental human rights issues which have yet to be explored.

Copyright of Indigenous Languages

In November 1994, the Oxford University Press attempted to secure an exclusive copyright of the *Williams Maori Language Dictionary*. First published in 1844, the dictionary remains the most authoritative dictionary of the Maori language. It has been reprinted twelve times (seven editions) by the New Zealand Government Print Office, an agency established to promote the recording and publishing of New Zealand history for the benefit of all New Zealanders.

Many of the first Maori language and Maori history publications were financed and published by a state- owned Printing Office on the understanding that such publications were "held in trust" as vital components of the national heritage. Privatization of state agencies, including the Print Office, has opened up Maori publications to copyright by the private sector. There are currently no mechanisms by which Maori can regain ownership. We will have to fight for each publication individually.

Traditional Uses of Indigenous Flora and Fauna

Several New Zealand companies have developed successful cosmetic products using traditional knowledge of flora and fauna. A fledging pharmaceutical industry is also being developed, but at this point the cosmetic properties of native plants are the primary target of commercial exploitation. In some cases the traditional knowledge comes from Indigenous informants, in other cases through research in historical records kept by early settlers–including those of Captain James Cook himself–which provide detailed and illustrated accounts of the properties and uses of native plants.

The Body Shop recently negotiated with a small tribal company their extraction process for the oil of the native *Manuka* plant. Manuka is a native plant common to most of the North Island and of significance to many different tribes, such that songs, proverbs, weavings and other art forms record the plant's special relationship to each tribe.

Thus, from a tribal point of view, it is difficult to accept the validity of any IPR agreement between two companies involving what most Maori would consider "common property." Exploitation itself is easier to understand than the attempt to patent the process, or to seek plant variety rights on the Manuka.

Already, plant variety rights have been granted to national and international companies for thirteen plants by the New Zealand government. In response, the Maori have filed a Treaty of Waitangi Tribunal Claim against the government, seeking confirmation that all native plants are the heritage of Maori tribes in the first place, and that any decisions relating to the commercialization of native plants must by made by Maori tribes themselves. This historical case is due for consideration in mid-1995.

Capacity Building: More Questions Than Answers

The right to intellectual property, as a western legal invention, was never designed to cope with the myriad "properties" now being thrust upon it. Indigenous knowledge and Indigenous resources simply do not fit into the IPR regime. Protection of heritage must be addressed through alternative mechanisms, but it must be a mechanism robust enough to apply to the diverse range of activities now threatening the heritage and livelihoods of Indigenous communities.

Indigenous communities need to sort out amongst themselves–without the interference of non-members–the tribal, sub-tribal and family "ownership" of knowledge. What is common property? Who has the right to give consent? Elders or youth? Tribal political structures or new additional specialist tribal organizations? What structures will they put in place? Should regional and national structures also be established? By whom?

Indigenous communities should also make greater use of the information highway and strengthen national, regional and international networks in order to exchange information, offer advice and experience, and keep informed of the growing swell of the second wave of colonization — misappropriation of Indigenous knowledge and biodiversity.

The most appropriate and results-oriented contribution that states and the international community could offer is to provide additional financing for community capacity-building, and to focus regulatory attention on external companies, agencies, and individuals.

As the Maori proverb states, the heritage of Indigenous communities rests with those communities. If any aspect of this heritage is removed, it becomes food for the fire. Similarity, the proverb reminds us that the integrity of a community requires us to hold firm and protect the treasures of the ancestors. If parts of our heritage have been lost, it is our responsibility to get them back, no matter how long it takes.