

Amazonian Peoples on Biodiversity and IPR

Resolutions from the Coordinating Body of Indigenous Communities of the Amazon Basin's Regional Meeting

September, 1994, Santa Cruz de la Sierra, Bolivia

The Coordinating Body of Indigenous Peoples of the Amazon Basin, representing Indigenous communities in this region, which is one of the richest in biodiversity in the world, will not be excluded from making its voice heard in respect to this subject.

In this regard, the Indigenous communities are well aware of the importance of protecting biodiversity, as well as our knowledge related to it. We know that our autonomy and assurance of life with dignity will depend on the processes of control, conservation and development of these resources especially over the next few years, when the world will be discussing the issues of biodiversity. We must be quite clear that we, the Indigenous communities, are the ones entitled to claim proprietary rights to these resources, in spite of increasing claims made by multinational corporations of the North.

This situation obliges Indigenous people and our organizations to take positions and elaborate strategies relevant to current and future generations. With this in mind, COICA, under the auspices of the UN Development Program, organized a regional meeting in South America. The conclusions and recommendations of that meeting are reprinted below.

I. Basic Points Of Agreement

1. Emphasis is placed on the significance of the use of intellectual property systems as a new formula for regulating North-South economic relations in pursuit of colonialist interests.

2. For Indigenous peoples, the intel-

lectual property system means legitimization of the misappropriation of our peoples' knowledge and resources for commercial purposes.

3. All aspects of the issue of intellectual property (determination of access to national resources, control of the knowledge or cultural heritage of peoples, control of the use of their resources and regulation of the terms of exploitation) are aspects of self-determination. For Indigenous peoples, accordingly, the ultimate decision on this issue is dependent on self-determination. Positions taken under a trusteeship regime will be of a short-term nature.

4. Biodiversity and a people's knowledge are concepts inherent in the idea of Indigenous territoriality. Issues relating to access to resources have to be viewed from this standpoint.

5. Integral Indigenous territoriality, its recognition (or restoration) and its reconstitution, are prerequisites for enabling the creative and inventive genius of each Indigenous people to flourish—and for it to be meaningful to speak of protecting such peoples. The protection, reconstitution and development of Indigenous knowledge systems call for further commitment to the effort to have these systems reappraised by the outside world.

6. Biodiversity and the culture and intellectual property of a people are concepts that mean Indigenous territoriality. Issues relating to access to resources, and others, have to be viewed from this standpoint.

7. For members of Indigenous peoples, knowledge and determination of the use of resources are collective and intergenerational. No Indigenous population, whether of individuals or communities, nor the government, can sell or transfer ownership of

resources which are the property of the people and which each generation has an obligation to safeguard for the next.

8. Prevailing intellectual property systems reflect a conception and practice that is:

a) colonialist, in that the instruments of the developed countries are imposed in order to appropriate the resources of Indigenous peoples; b) racist, in that it belittles and minimizes the value of our knowledge systems; c) usurpatory, in that it is essentially a practice of theft.

9. Adjusting Indigenous systems to the prevailing intellectual property systems (as a world-wide concept and practice) changes the Indigenous regulatory systems themselves.

10. Patents and other intellectual property rights to forms of life are unacceptable to Indigenous peoples.

11. It is important to prevent conflicts that may arise between communities from the transformation of intellectual property into a means of dividing Indigenous unity.

12. There are some formulas that could be used to enhance the value of our products (brand names, appellations of origin), but on the understanding that these are only marketing possibilities, not entailing monopolies of the product or of collective knowledge. There are also some proposals for modifying prevailing intellectual property systems, such as the use of certificates of origin, to prevent use of our resources without our prior consent.

13. We must prevent the use of current systems of intellectual property from robbing us, through monopoly rights, of resources and knowledge in order to enrich these systems and build up power opposed to our own.

14. Work must be conducted on the

design of a protection and recognition system which is in accordance with the defense of our own conception, and mechanisms must be developed in the short and medium term to prevent appropriation of our resources and knowledge.

15. A system of protection and recognition of our resources and knowledge must be designed which is in conformity with our world view and contains formulas that, in the short and medium term, will prevent the appropriation of our resources by the countries of the North and others.

16. There must be appropriate mechanisms for maintaining and ensuring the right of Indigenous peoples to deny indiscriminate access to the resources of our communities or peoples, and making it possible to contest patents or other exclusive rights to what is essentially Indigenous...

17. Discussions regarding intellectual property should take place without distracting us from priorities such as the struggle for the right to territories and self-determination, bearing in mind that the Indigenous population and the land form an indivisible unity.

II. Short-Term Recommendations

1. Identify, analyze and systematically evaluate from the standpoint of the Indigenous world view different components of the formal intellectual property systems, including mechanisms, instruments and forums, among which we have:

a) Intellectual property mechanisms

Patents, Trademark, Authors' rights, Rights of developers of new plant varieties, Commercial secrets, Industrial design, Labels of origin.

b) Intellectual property instruments

The Agreement on Trade-Related Intellectual Property Rights (TRIPS) of the General Agreement on Tariffs and Trade (GATT); The Convention on Biodiversity, with special emphasis on the following aspects: environmental impact assessments, subsidiary scientific body, technological council, monitoring, national studies and protocols, as well as on rights of farmers and ex situ control of germ plasm, which are not covered

under the Convention.

c) Intellectual property forums

Define mechanisms for consultation and exchange of information between Indigenous organizations and international forums such as the: Treaty for Amazonian Cooperation, Andean Pact, General Agreement on Tariffs and Trade, European Patents Convention, United Nations Commission on Sustainable Development, Union for the Protection of New Varieties of Plants, World Intellectual Property Organization (WIPO), International Labor Organization (ILO), United Nations Commission on Human Rights.

2. Evaluate the possibilities offered by the international instruments embodying cultural, political, environmental and other rights that could be incorporated into a sui generis legal framework for the protection of Indigenous resources and knowledge.

3. Define the content of consultations with such forums.

4. Define the feasibility of using some mechanisms of the prevailing intellectual property systems in relation to protection of biological/genetic resources and marketing of resources.

5. Study the feasibility of alternative systems and mechanisms for protecting Indigenous interests in our own resources and knowledge: sui generis systems for protection of intellectual property; inventors' certificate, model legislation on folklore; new deposit standards for material entering germ plasm banks; commissioner for intellectual property rights; tribunals; bilateral and multilateral contracts or conventions; materials transfer agreements; biological prospecting; defensive publication certificates of origin.

6. Seek to make alternative systems operational within the short term, by establishing a minimal regulatory framework (for example bilateral contracts).

7. Systematically study, or expand studies already conducted of, the dynamics of Indigenous peoples, with emphasis on: basis for sustainability (territories, culture, economy); use of knowledge and resources (collective ownership systems, community use

of resources); community, national, regional and international organizational bases.

These will make it possible to create mechanisms within and outside Indigenous peoples capable of assigning the same value to Indigenous knowledge, arts and crafts as to western science.

8. Establish regional and local Indigenous advisory bodies on intellectual property and biodiversity with functions involving legal advice, monitoring, production and dissemination of information, and production of materials.

9. Identify national intellectual property organizations, especially in areas of biodiversity.

10. Identify and draw up a timetable of forums for discussion and exchange of information on intellectual property and/or biodiversity. Seek support for sending Indigenous delegates to participate in such forums. An effort will be made to obtain information with a view to the eventual establishment of an Information, Training and Dissemination Center on Indigenous Property and Ethical Guides on contract negotiation and model contracts.

III. Medium-Term Strategies

1. Plan, program, establish timetables and seek financing for the establishment of an Indigenous program for the collective use and protection of biological resources and knowledge. This program will be developed in phases according to geographic areas.

2. Plan, draw up timetables for and hold seminars and workshops at the community, national and regional levels on biodiversity and prevailing intellectual property systems and alternatives.

3. Establish a permanent consultative mechanism linking community workers and Indigenous leaders, as well as an information network.

4. Train Indigenous leaders in aspects of intellectual property and biodiversity.

5. Draw up a Legal Protocol of Indigenous Law on the use and community knowledge of biological resources.

6. Develop a strategy for dissemination of this Legal Protocol at the national and international levels.