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Geneva, July 23 and 24, 1998

**INITIATIVES FOR PROTECTION OF RIGHTS OF HOLDERS OF TRADITIONAL
KNOWLEDGE, INDIGENOUS PEOPLES AND LOCAL COMMUNITIES**

Document presented by Mr. Antonio Jacanimijoy, Coordinating Body for the Indigenous Peoples' Organizations of the Amazon Basin (COICA), Quito

*Initiatives for the Protection of the Rights of the Possessors of Traditional Knowledge,
Indigenous Peoples and Local Communities**

My name is Antonio Jacanimijoy, I am of the indigenous Inga people of Putumayo-Colombia, and at present I act as General Coordinator of COICA (Coordinating Body for Indigenous Peoples' Organizations of the Amazon Basin).

COICA is a regional organization that represents about 400 indigenous Amazon peoples, with an approximate population of a million and a half, distributed over Bolivia, Brazil, Colombia, Ecuador, French Guiana, Guyana, Peru, Suriname and Venezuela.

In the name of COICA, I express my thanks to WIPO for having organized this Roundtable as the first formal event that will permit us to explore the bases for machinery with which to protect the basic intellectual property rights of indigenous peoples. This is a fundamental issue in our struggle in the Amazon Basin environment, as it is one that is directly related to our life, our future and our very survival on the face of the earth. We therefore hope that this event will be the first step in a more thoroughgoing process of WIPO concentration on the subject concerned, with the full participation of representatives of indigenous peoples.

*Intellectual Property Systems in the Context of the Diversity of Existing Forms of
Knowledge and Social Organization*

Intellectual property systems, especially the patent system, already have a long history dating back to the last century. This history has evolved in response to the legal protection needs of inventions from an established sector in developed countries, and is tailored to an industry that seeks to enhance its competitiveness, control markets and increase its revenue.

* This document reflects the author's opinion and not necessarily that of the World Intellectual Property Organization (WIPO).

Also, and in keeping with its aims, the intellectual property system promotes free access to the raw material and the original knowledge which in many cases make it possible, nowadays, for a product to be patented.

On the one hand, the fact that just one per cent of all patents in the world are granted to persons from underdeveloped countries, and on the other hand the fact that 90 per cent of germ plasm, the basis for genetic improvement programs, comes from underdeveloped countries, gives us a clear idea of the intellectual property system responding to the interests of a specific sector.

We are very concerned that, as time passes, intellectual property systems are being perfected to afford better protection to the interests of that sector which possesses the technology and the financial means, at the same time allowing free access to the raw materials and the associated knowledge.

As the twenty-first century approaches, at a time when mankind is struggling to lessen the marginalization and poverty of the peoples of the world, at a time when biotechnology as being hailed as an alternative way of imparting wealth and well-being to societies throughout the world, we cannot continue to operate and promote an intellectual property system that recognizes the contributions of some but not of others, further deepening the rift between rich and poor. A system founded in this way is based on injustice, and as such is unsustainable and in need of change. We consider it vitally important to develop systems of protection and compensation for forms of innovation that are not covered by traditional patent systems.

In the case of indigenous peoples this situation is particularly delicate. Our peoples have for generations been involved in the discovery, improvement and conservation of innumerable plant species and animal breeds for the benefit of themselves and mankind as a whole. Nevertheless, under the cover of international treaties and national laws imposed in our countries, we have looked on helplessly as companies and research institutes have made use of our knowledge, appropriated our resources and made money from what they call “their inventions.”

***The Use of the Traditional Knowledge, Innovations and Practices of Indigenous Peoples
for the Obtaining of Patents***

I should like to mention three examples of ways in which our know-how has been used for the obtaining of patents without concern for any kind of recognition and still less reward for the input provided by our peoples.

The Ayahuasca or Yagé

In 1996, COICA found out from a press source that the International Plant Medicine Corporation of the United States of America had patented the Ayahuasca or Yagé, a sacred plant of the indigenous peoples of Amazonia. The invention they claim is a variety of the ayahuasca, *Banisteriopsis Caapi*, which was domesticated by our peoples hundreds of years ago, and the so-called “inventor,” Loren Miller, admitted having collected the sample from the farmstead of an indigenous family of the Ecuadorian Amazon.

The patent was granted to Miller, who had shown the difference between his sample and another growing in a botanical garden in the state of Hawaii.

For us the grant of this patent is a glaring case of “biopiracy.” On the one hand it is scandalous that it should be possible for a person to acquire a patent for a plant that we have known and made use of for many years, and on the other hand it has to be admitted that it is a serious affront to our peoples for a person to appropriate a sacred symbol that belongs to us all.

COICA has now decided to take this matter in hand and file an invalidation action with the US Patent Office; we are engaged in negotiations with experts and attorneys who have decided to support us in our search for the best way of conducting the action. However, we do not consider that it is for us, every time we discover illegal patents taken out for our natural resources and knowledge, to initiate legal proceedings, which are usually long drawn-out and costly, to claim the rights of indigenous peoples and obtain justice. No: the solution has to be found elsewhere.

Leishmaniasis

Another example is the case of a patent granted to the French Institute of Scientific Research for Development in Cooperation, better known by its acronym ORSTOM, for their alleged “discovery” of a natural product to combat the disease known as leishmaniasis. As you may know, leishmaniasis is a typical disease of tropical areas, transmitted by the bite of a mosquito and affecting 12 million people throughout the world. The most important symptoms of this disease, which resembles leprosy, are serious skin lesions, mainly in the nose and on the lips, which eventually cause terrible facial disfigurement and even death. The present treatment is very costly and extremely toxic. Those most seriously affected live in rural areas, and in most cases have no access to the few health centers available.

At the end of the 1980s French and Bolivian researchers, working on the basis of ethnobotanical studies in the Chimane tribe, an indigenous people living in the areas in which the disease is endemic, “discovered” a plant called evanta which, when applied in the form of a compress, is used by that indigenous Amazonian people to treat the disease. Laboratory analysis in France and Bolivia proved the great efficacy of this plant in the treatment of the disease. The active principles of the alkaloid family were indeed given the name of “chimanines,” in honor of the indigenous people who disclosed their traditional knowledge. However, without consulting the Chimane people, the French and Bolivian researchers availed themselves of the international patent system known as the PCT and patented their “discovery,” whereupon the patent was granted to them without any consideration of the rights of Chimani people. As a result, the Chimane have no right to decide how this product may be used, and still less to derive some profit from the commercial use of it, and that in spite of the active ingredients having been given the name of “chimanines.”

Quinoa

Another example is the patent in the quinoa of Bolivia's Altiplano region. In 1994, two researchers from the University of Colorado in the United States of America were granted a patent for a variety of quinoa called Apelawa. In fact the patent relates to a characteristic called masculine sterility that the Apelawa variety possesses, and indeed covers all plants produced with the germ plasm concerned. The interest of the patent is that it enables hybrid varieties to be developed for the achievement of more abundant harvests.

The holders of the patent have admitted having obtained the genetic material of the quinoa from the Altiplano region near Lake Titicaca. The patent does not recognize the place of origin, however, nor does it recognize the contribution made by the peoples of the Altiplano to quinoa growing, improvement and research for thousands of years. The inhabitants of the region were well aware of the masculine sterility characteristic of the variety of which the US researchers are now the supposed inventors. If ever the patent came into force, even the farmers of the Bolivian Altiplano would be obliged to pay royalties for the use of varieties derived from the Apelawa variety when they produced plants for export to the United States of America.

The patent is not in force, however, partly thanks to international campaigns that the producers themselves and international organizations have undertaken against it. The deadline for its renewal was April 20 of this year, and the holders decided not to renew. This type of patent, quite apart from being quite unethical, has a direct effect on the economy of those dependent on quinoa growing for their daily livelihood.

These are just three of the many cases that could arise and which we describe as "biopiracy." The examples are a clear reflection of the reality in which we live. Very rarely are we indigenous peoples consulted, while our knowledge is exploited by others without any benefit coming back to us. At present our knowledge is being extensively plundered in the field of music, design and medicinal plants, all of which belong to our collective intellectual and cultural heritage. There is no recognition of and still less respect for the knowledge of indigenous peoples or of our collective rights. Apart from that, it is our opinion that present

intellectual property systems do not even work well: very often we see patents being granted without compliance with the fundamental patenting requirements, especially the fulfillment of the criteria of novelty and inventive step or non-obviousness.

Modern technology, for instance biotechnology, calls for the application of new forms of regulation and also restrictions, above all in relation to the patenting of biological material, in which there are preexisting elements of traditional knowledge and also natural elements.

This development is a matter of concern to us, precisely because we live in one of the most biologically diverse regions of the world. For that reason natural and genetic resources, from our medicinal plants to our own blood and cells, are becoming central to this area of interest. Above all our knowledge of those natural resources and their uses can be of great value to researchers in the pharmaceutical and agricultural industries.

We wish to emphasize that we are not, as indigenous peoples, opposed to development or to research aimed at discovering new alternatives to ensure the survival of mankind, and we are willing to share our knowledge with others. We do however wish to win respect for our life-forms, our cultural diversity, our lands and territories, our knowledge and our indigenous perception of the world. The system in force at present neither recognizes nor respects our past, present and potential contributions.

International Treaties Relating to Indigenous Traditional Knowledge

Another thing that preoccupies us is the realization that, while in various international gatherings and conventions governments are granting more and more recognition to our rights, the space allowed for the discussion of intellectual property systems is not consistent with that generous spirit; indeed it is being closed off, preventing the acceptance of new forms of recognition for the contribution of our peoples, and yet there are already international conventions in existence that offer recognition for our intellectual property rights in one form or another, among which we could mention:

ILO Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries

Article 13.1: “In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.”

Article 13.1 recognizes the spiritual, cultural and collective character of our relation to our lands and territories, which is important to the subject of intellectual property and the protection of traditional knowledge.

Another article of the same Convention, Article 15.1, says that “The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.”

This Article recognizes the right of indigenous peoples to a voice when access to natural resources on their lands and territories is at issue.

Draft UN Declaration on the Rights of Indigenous Peoples

Article 29: “Indigenous peoples are entitled to the recognition of the full ownership, control and protection of their cultural and intellectual property. They have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs and visual and performing arts.”

Convention on Biological Diversity (CBD)

The CBD recognizes the contribution of knowledge and innovation made by indigenous peoples, and more importantly the right that we have to give or withhold our consent before our natural resources are used, and also to participate in the benefits derived from such use:

In this connection Article 8(j) says that “Each Contracting Party shall, as far as possible and as appropriate (...) Subject to its national legislation, 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 and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.”

UNESCO and WIPO

What is involved here is an initiative for the production of guidelines to extend the principle of copyright to the whole range of tangible and intangible cultural assets, including folk tales, indigenous poetry, dances, theater, rituals that adopt artistic forms, drawing, painting, sculpture, textiles, musical instruments and architecture.

For its part, UNESCO has produced a number of documents relevant to indigenous peoples (1996, UNESCO-PICC), providing that every culture has a dignity and value that must be respected and preserved, and that every country has the right and duty to develop its own culture.

Apart from expressing recognition for our intellectual property rights, the above provisions acknowledge that there is a direct link between the intellectual property rights of indigenous peoples and their rights in lands and territories, including control over access to the natural resources that they contain, and control over our own knowledge.

Regrettably, these rights are under threat from other international agreements, signed by the same countries, which protect other interests. For instance, there are the trade agreements that promote the total liberalization of world commerce and give priority to greater economic growth, over and above social and cultural considerations and the preservation of the environment.

Regional Initiatives for the Protection of Traditional Knowledge

A number of countries and organizations throughout the world are already thinking of ways in which equitable and efficient alternative systems for the protection of traditional knowledge, innovations and practices may be implemented.

Some years ago a process began in the Andean countries of South America that culminated in July 1996 in the approval of Decision 391, the *Common Regime on Access to Genetic Resources*, as part of the Cartagena Agreement, now known as the Andean Community of Nations, comprising Bolivia, Colombia, Ecuador, Peru and Venezuela. The decision is somewhat unclear on the treatment of traditional knowledge relating to genetic resources, apart from which indigenous peoples were not invited to take part in its drafting.

Nevertheless, arrangements were made in the transitional provisions of Decision 391 for the development of a special regime or standard for harmonization with a view to strengthening the protection of the traditional knowledge, innovations and practices of indigenous communities, both African-American and local. To that end each country undertook to draw up a National Study.

We know that not all Andean countries took this commitment seriously, while those that did carried out the Study in different ways and with different degrees of indigenous participation. In Peru, for instance, they are trying to incorporate the protection of traditional knowledge in the rules of intellectual property already in existence, but without indigenous participation. This contrasts with Bolivia, where there has been a political will on the part of the Government to devise a special regime for the protection of traditional knowledge and innovations. For instance, a process of consultation and training of indigenous peoples has

started, conducted by the Confederation of Indigenous Peoples of Oriental Bolivia or CIDOB, a member of COICA, which, it is hoped, will produce a national proposal in the support of a regional proposal for the protection of traditional knowledge, innovations and practices in Andean countries.

The challenge for indigenous organizations such as ours is to demand full participation for the presentation of our proposals, because a process such as this without indigenous participation makes no sense. Up to now participation at the regional level has been difficult, but we are still trying. In any event, it could be that the experience of the Andean countries might be of service to other governments, intergovernmental organizations, NGOs and indigenous peoples elsewhere in the world.

Clearly the implementation of an equitable and efficient *sui generis* system for the protection of our knowledge, innovations and practices is the responsibility of States. We do think, however, that it is important at the international level to work out principles and guidelines with which to facilitate the process.

Input for Future Work on the Protection of Traditional Knowledge, Innovations and Practices

We should like to make an appeal to WIPO to take due account of the following issues, which are fundamental to indigenous peoples in connection with the protection of our knowledge, innovations and practices:

Recognition of the Knowledge, Innovations and Practices of Indigenous Peoples

There should be legal recognition of the traditional knowledge, innovations and practices of indigenous peoples as forming part of intellectual property systems. Until such time as such new protection systems have been introduced, the traditional knowledge, innovations and practices of indigenous peoples should be given recognition as *innovations of informal and collective character*.

Alternative systems should be devised, including special regimes recognizing collective ownership, and also *sui generis* systems for the protection and remuneration of indigenous knowledge. Such systems for the protection and recognition of indigenous rights should be based on acceptance that the knowledge of indigenous peoples is collective and inter-generational in character, and forms part of the territory, culture and world view of indigenous peoples.

A special regime recognizing collective ownership should promote the non-commercial interchange of knowledge between indigenous peoples.

COICA and the indigenous organizations of the Amazon Basin emphasize their steadfast opposition to the grant of patents for life-forms.

Development and Application of the Concept of Prior Informed Consent

The requirement of prior informed consent should be fundamental to the disclosure of our knowledge, and we therefore propose that instruments of prior informed consent that can be legally adapted should be developed. *Prior informed consent should be backed up by reasons and should be collective in character.*

These instruments should incorporate clear options and include the right of indigenous peoples to deny access to knowledge and natural resources existing in their lands and territories whenever the purpose of a given transaction is to destroy or otherwise impair the integrity of indigenous knowledge.

Equitable Distribution of Benefits

Guarantees should be introduced to ensure equitable participation in any benefits that might result from the marketing of our knowledge, innovations and practices or of the resources of our lands and territories.

Laws and arrangements should be worked out for the equitable and democratic distribution of those benefits. In our opinion there are many ways of doing this, such as through the agency of trust funds or projects for the preservation of traditional knowledge and programs of sustainable development, to mention only those.

Finally, on behalf of COICA, we recommend to WIPO that it participate in the Working Group recently set up by COP4 of the Convention on Biological Diversity for the implementation of Article 8(j) and related Articles.

Thank you very much.

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