

## Meeting on intellectual property rights and biodiversity

COICA and UNDP, Santa Cruz, Bolivia

1994

Keywords: conservation, biodiversity, intellectual property right, indigenous community.

COICA and UNDP hosted a regional meeting in Santa Cruz de la Sierra, Bolivia from 28-30th September 1994 to debate Intellectual Property Rights and Biodiversity. Present were representatives of the following Latin American Peoples Organisations: COICA (Coordinating Body of Indigenous Organisations of the Amazon Basin); CIDOB, Bolivia; CONFENIAE, Ecuador; CONIVE, Venezuela; ONIC, Colombia; COIAB, Brazil; AIDESP, Peru; APA, Guayana; OIS, Suriname; Consejo de todas las Tierras, Chile; AIRA, Argentina; and IIDEMAYA, Guatemala. Also represented were NGOs with an interest in IPR and biodiversity issues, such as the Rural Advancement Fund International (RAFI) and the Working Group on Traditional Resource Rights (WGTRR). The participants produced a consensus document expressing their views on IPR and their recommendations for short and long-term strategies. Western IPR regimes are deemed to be instruments of domination and incompatible with indigenous cultures. IPR to life forms are unacceptable to indigenous peoples. On the other hand, those intellectual property rights which do not create monopolies, such as trademarks and appellations of origin, could be of use. The following statement was produced at the conclusion of the Meeting. For further information contact Valerio Grefa, COICA, Apdo.17.01.4180, Quito, Ecuador. Tel: (593) 255 3297. Fax: (593) 244 271.

### THE COICA STATEMENT

#### 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 intellectual 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 natural 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 adopted 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 seen 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 the systems of indigenous knowledge systems call for additional commitments to the effort to have them 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: colonialist, in that the instruments of the developed countries are imposed in order to appropriate the resources of indigenous peoples; racist, in that it belittles and minimizes the value of our knowledge systems; 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 (trademarks, 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. The prevailing intellectual property systems must be prevented from robbing us, through monopoly rights, of resources and knowledge in order to enrich themselves 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 defence of our own conception,

- and mechanisms must be developed in the short and medium term which will 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
  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 for making it possible to contest patents or other exclusive rights to what is essentially indigenous.
  17. There is a need to maintain the possibility of denying access to indigenous resources and contesting patents or other exclusive rights to what is essentially indigenous.
  18. Discussions regarding intellectual property should take place without distracting from priorities such as the struggle for the rights 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, analyse 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:

### Intellectual Property Mechanisms

Patents; trademarks; copyright; rights of developers of new plant varieties; trade secrets; industrial design; appellations of origin.

### Intellectual Property Instruments

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

### Intellectual Property Forums

Define mechanisms for consultation and exchange of information between the global indigenous movement and international forums, such as:

The Treaty for Amazonian Cooperation

The Andean Pact

The General Agreement on Tariffs & Trade

The European Patents Convention

The United Nations Commission on Sustainable Development

The Union for the Protection of New Varieties of Plants (UPOV)

The World Intellectual Property Organisation

The International Labour Organisation  
The 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; Marketing of resources
5. Study the feasibility of alternative systems and mechanisms for protection of indigenous interests in their resources and knowledge.  
Sui generis systems for protection of intellectual property:

Inventor's certificates;

Model legislation on folklore;

New deposit standards for material entering germplasm banks;

Commissioner for intellectual property rights;

Tribunals;

Bilateral and multilateral contracts or conventions;

Material 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:  
The basis for sustainability (territories, culture, economy);  
Use of knowledge and resources (collective ownership systems, Community use of resources);  
Communal, national, regional and international organisational bases

That 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 organisations, especially in the area 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 Centre on Indigenous Property, and Ethical Guidelines on contract negotiation and model contracts.

### III. Medium Term Strategies

1. Plan, programme, establish timetables and seek financing for the establishment of an indigenous programme for the collective use and protection of biological resources and knowledge. This programme will be developed in phases in conformity with areas of geographical coverage.
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 standing consultative mechanism to link 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.

Santa Cruz, Bolivia, 30 September 1994.