

**DOCUMENT SUBMITTED BY THE COMISION JURIDICA PARA EL  
AUTODESARROLLO DE LOS PUEBLOS ORIGINARIOS ANDINOS (CAPAJ) -  
JURIDICAL COMMISSION FOR THE SELF-DEVELOPMENT OF ANDEAN INDIGENOUS  
PEOPLES, AD HOC OBSERVER**

of the work on intellectual property and genetic resources, traditional knowledge and cultural expressions of the World Intellectual Property Organization (WIPO)

**TO BE EXAMINED AT THE XXII SESSION OF THE INTERGOVERNMENTAL  
COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES,  
TRADITIONAL KNOWLEDGE AND FOLKLORE (IGC) ON TRADITIONAL CULTURAL  
EXPRESSIONS (TCES)**

**1.-Introduction**

The Andean Qollaninca civilization was formed over a period of 20,000 years by the original Andean and Amazonian peoples of the continent of Awayala, now known as America. This civilization created and produced genuine knowledge and cultural expressions greater than those imposed in the wake of the colonial invasion.

The existing states are a Western invention and have no right to claim sovereignty over the genuine cultural expressions inherited by the current original Andean peoples who are protected by modern-day international public law on indigenous peoples.

Thus, the World Intellectual Property Organization (WIPO) can only approve the text of an international standard designed to protect the cultural expressions of indigenous peoples if it has previously fully recognized the right of the indigenous peoples to self-determination as the doctrinal basis for the work of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC).

## **2.- Traditional Cultural Expressions (TCEs)**

Under this sub-heading, the IGC has prepared a text containing 11 articles that will be on the agenda at the XXII Session of the Committee, to be held from July 9 to 13, 2012, in Geneva.

On April 18, 2012, CAPAJ held a special event on musical artistic creations in Room “B” at WIPO Headquarters with the aim of contributing to the debate on TCEs. From an intellectual property standpoint, TCEs are forms of expression of the traditional culture of an indigenous community and are transmitted from generation to generation, forming part of that community’s identity and cultural heritage. TCEs can be dances, songs, handicrafts, designs, ceremonies, tales or many other artistic or cultural expressions.

Seen from the point of view of the Qollaninca civilization, these expressions constitute the art of the indigenous peoples, with traditional knowledge being their science and technology.

### **3.-Aim in terms of protection**

From an intellectual property perspective, the aim of TCE protection is to ensure that the intellectual innovation and creativity inherent in traditional knowledge (TK) or traditional cultural expressions are not misused.

However, in the view of the original Andean peoples of the Qollaninca civilization, protection must be designed to ensure the continuity and increased generation of new creations, within a broad framework of freedom. The aim is not only to prevent the misuse of TCEs and TK, but also, and above all, to establish a regulatory framework that will allow the indigenous peoples to overcome the trauma caused by colonialism and to reclaim their historic destiny, in order to continue with their creative work and to generate knowledge concerning the rational use of the elements constituting their environment.

### **4.-Cultural heritage of the indigenous peoples**

The Study on the protection of the cultural and intellectual property of indigenous peoples, prepared by Ms. Erica-Irene Daes, Special Rapporteur of the former Sub-Commission on Prevention of Discrimination and Protection of Minorities, was published on July 28, 1993, as document E/CN.4/Sub.2/1993/28. In this official United Nations document it was stated, as a part of the conceptual framework of the Study, that “Indigenous peoples were, in succession, despoiled of their lands, sciences, ideas, arts and cultures.” The fruit of this process of looting formed the basis for huge fortunes, the owners of which are now seeking to legitimize their wealth under the cover of a new international standard for the protection of the cultural heritage of the indigenous peoples.

However, attempts to qualify the actual art of the indigenous peoples as Folklore distort the true value of art that is full of the cultural expressions of the indigenous peoples. The word ‘traditional’ does not reflect the true status of indigenous creations, meaning as it does that they are products of mere custom, when the art in question is in fact the product of the systematic action of an authentic civilization. The art of the indigenous peoples is not simply made up of traditions, yet WIPO treats it as inferior, taking an intellectual property-based stance when directing the debate within the IGC. This approach is contrary to the mandate of the WIPO General Assembly, which is to produce a standard that gives real meaning to the protected material, in this case genuine classical art of the indigenous peoples that forms a part of their cultural heritage.

In our humble opinion, in order to carry out its mandate of drawing up a “sui generis’ standard, the WIPO General Assembly must ensure that the debate focuses on civilizations. It is not States but rather the indigenous peoples, whose homelands stretch across national boundaries, who are the owners of art and culture. Artistic creations, restorations and innovations are the product of the experiences of the peoples who go to make up individual civilizations. The term “traditional cultural expression” is not entirely inaccurate, however, in the interests of greater precision, and in order for an understanding to be reached as a part

of the dialogue between civilizations in which WIPO has been involved for over a decade, the self-proclaimed “unique” civilization must change its stance.

## **5.- Presentation of our case**

Indigenous Aymara Andean classical music expert, performer, restorer and curator, Julio Arguedas Arancibia, the founder of the Bolivia Manta movement/group, visited WIPO as a guest of CAPAJ on April 18, 2012. He gave the following presentation on the importance of higher art:

### **THE *TAKI* AS A HIGHER CULTURAL EXPRESSION OF THE AYMARA, QUECHUA AND URU-CHIPAYA PEOPLES**

The term “*Taki*” was previously used to describe the various forms of expression such as music, song, dance and ritual, of our Andean peoples. With the advent of the Spanish Conquest, a deliberate policy of systematic repression was implemented in order to eradicate any symbols of the “vanquished” culture. Efforts were made to impose a new faith and “official” language. The Church took away all the children of the leaders of the Inca, Maya and other indigenous peoples in order to “educate them according to the precepts of the Holy Catholic Church”, while also transforming them into preachers operating within their own families.

Despite the best efforts of the conquistadors, our original peoples always maintained a relationship with PACHAMAMA (the Mother Earth that feeds us) that was based on respect and duty. The Catholic Church was forced to compromise in order to get our peoples to agree to respect the institution and its symbols:

PACHAMAMA now exists in the form of the various Virgins, Candelaria, Concepción, El Carmen, etc. ILLAPA (The Inca god of thunder, lightning and rainstorms) is now known as Tata Santiago, etc.

However, essentially our peoples have not changed!

The full extent of the importance of the *Taki* may be seen in the fact that the Aymara and Quechua societies are agrarian in nature; the dates of festival days are closely linked to the agricultural cycles and music, dances and rituals have always been connected to that reality. Certain types of music and instruments may only be used at specific times because the sounds produced also have their own functions. The Aymara term "*Aru Amunia*" means the art of synchronizing sounds.

At the time of the Conquest, a high point had been reached in terms of the development of musical techniques, in particular with regard to wind instruments. Orchestras performing with great skill and equipped with *sikus* (panpipes) were able to split the melodic scale (two *sikus* are needed to make an individual instrument), with the musicians having to play together in a collective form similar to the indigenous *ayllu* (community) political structure.

Currently, such performance techniques for this particular instrument only exist in two regions of the world, South America (the Andes) and Melanesia (the Are'are people).

The other wind instruments, such as *queñas*, *tarkas* and *mohoceños* (all types of flute), must also be played collectively.

Consequently, it is clear that individuals cannot exist alone but rather we form part of a wider collective. Indeed that is how our cultures have always operated, even now.

The term *Taki* can be found in the writings of the earliest commentators from the period of the Conquest (Guaman Poma de Ayala, Fernando Pizarro). One story tells of how, on seeing the pain and despair of the people when Cuzco fell to the conquistadors, the Inca high priests announced that the population must sing and celebrate non-stop in order to re-establish the harmony that had been lost! That phenomenon was known as *Takioncoy*, translated by the commentators of the day as “the sickness of the song”. However, the *Taki* is now understood as, and plays the role of, a vehicle for the transmission of cultural identity. The *Taki* is not “folklore” but rather the classical form of expression of our peoples.

### **CREATION AND RITUAL USE OF THE CHARANGO**

When the conquistadors saw the close relationship that the original peoples had with their ceremonies and rituals (Takies – Guaman Poma), they banned the use of certain instruments and religious objects. European musical instruments, such as the baroque guitar, the *vihuela* (a guitar-like instrument with six doubled strings), the violin and the harp, were imposed on the people, as was the obligation to learn religious canticles.

At that time, Spain was subject to the Inquisition, a phenomenon that was exported to the New World and that led to brutal repression. However, our peoples adopted the abovementioned instruments, using them as a basis to create their own. The *charango* (a small, guitar-like instrument, with up to 12 strings) could be described as the first fruit of the syncretism of the period and also the first instrument of cultural resistance of the Aymara and Quechua peoples.

The traditional heartland of the *charango* is mainly the Republics of Bolivia and Peru. I use the term “traditional” here because this instrument is played during ceremonial rituals in Aymara and Quechua communities in both countries.

The *Sirena* or *Serenay* ceremony, involving the “tuning” of a new (soulless) *charango* near a *puquio* (spring) or *pakcha* (waterfall), is a right of passage for young men entering adulthood. If the instrument is tuned correctly, the player will find a wife. On hearing the “enchanted” sound of the *charango*, the object of the young man’s affection falls under his charms and the two of them can then be seen together in public and dance with the *comparsas* or *pandillas* (dance troupes) that perform at local festivals.

Here PACHAMAMA is, as ever, the key element, given that the *puquios* and *pakchas* act as channels for artistic and poetic inspiration.

The *charango* is also used in provincial urban centers and cities across Latin America, where it is played using sophisticated performance techniques. However, it should never be forgotten that the instrument is a symbol that represents our original peoples.

I should like to conclude with the following observation: our original peoples are extremely rich in terms of cultural and artistic creations. We are not a “fossilized” or museum-bound culture, we have an extremely vigorous and energetic cultural identity. We can and indeed do provide the world with experiences of life and struggle, but we also ask that we and what is ours be treated with respect. Perhaps there is a need to create new case law to protect our contributions, but not in individual terms. Authors’ societies are designed to demand rights but they protect individuals. In the case of the world’s original peoples, the rights of each people, *ayllu* or community must be respected. I believe that this is the only way to build a fairer world for future generations.

Julio Arguedas. Paris, April 5, 2012.

## **6.- The 11 articles proposed**

These articles constitute a legal corpus which fails to take into account the fact that both paragraph 2 of Article 27 of the Universal Declaration of Human Rights and paragraph 1 of Article 15 of the International Covenant on Economic, Social and Cultural Rights refer to the right of everyone “to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.” In Ms. Erika Daes’ official report it is stated that “A government’s failure to protect indigenous peoples’ collective rights to their heritage may be discriminatory, if justified by the argument that indigenous peoples have a **lesser right than the State**, or museums and academic institutions”.

The same report quotes the United Nations Commission on Human Rights independent expert on the right of everyone to own property alone as well as in association with others, Mr. Luis Valencia Rodriguez, who states that: "The sense of security and dignity gained from being able to own property is an essential prerequisite for the pursuit of happiness and exercise of a variety of other human rights". When we deny indigenous peoples the ownership of their cultural creations, we deny them their humanity. There are ample reasons for amending this text and rendering it more precise but, as ad-hoc observers, even those giving a voice to a genuine nation with a civilization different to that of the hosts, to the process can only make themselves heard if a State endorses their proposals, the work of the IGC does not benefit from such contributions because the Committee’s actions lack the focus on human rights called for by the indigenous peoples.